Exhibit 4



July 25, 2007 7:18 p.m. EDT

3rd UPDATE: SEC Charges Former KLA-Tencor CEO In Backdating

DOW JORES MEWEWIELS July 25, 2007 7:22 p.m.

(Adds comment from Schroeder lawyer in fifth, 10th and 11th paragraphs; background on executive departures in 12th paragraph.)

By Siobhan Hughes OF DOW JONES NEWSWIRES

WASHINGTON (Dow Jones).-The U.S. Securities and Exchange Commission on Wednesday charged the former chief executive of KLA-Tencor Corp. (KLAC) with engaging in a scheme to backdate stock option grants even after he was told by the company's top lawyer that it was improper to do so without telling investors.

The SEC filed civil-fraud charges against Kennoth Schroeder, 61 years old, of Los Altos Hills, Calif., accusing him of repeatedly backdating options between 1999 and 2002. The SEC also said he backdated in 2005, after passage of the Sarbanes-Oxley Act limited backdating opportunities by requiring companies to disclose stock-options awards within two days.

""We've all heard executives say that they didn't know how to properly account for stock options pro-Sarkence-Oxley," said Michael Dicke, assistant regional director in the SEC's San Francisco office. "At least here, the CEO was correctly advised not to backdate, and how to properly disclose the company's stock options practices. He chose to ignore that advice."

Stock options give the holder the right to buy stock at a price determined on the date of the grant. Backdating involves pretending the options were granted on an earlier date when the price was lower. The practice can land executives and companies in hot water with the SEC, the Internal Revenue Service and the Justice Department if it isn't

disclosed.

Schroeder plans to fight the SEC charges. "When Mr. Schroeder became CBO in mid-1999, he inherited a process that appeared to him to be working properly," his lawyer, Shirti Weiss, said in a statement. "The company's failure to properly account for its option grants is the proper responsibility of those at the company charged with implementing its internal accounting controls. For his part, Mr. Schroeder has always been clear about his understanding of the matter."

The SEC separately accused KLA-Tencor of concealing more than \$200 million in stock option compensation over eight years starting in 1998 by backdating the grants to evoid reporting expenses to investors. The San Jose semiconductor company wasn't fined, and settled without admitting or denying wrongdoing. KLA-Tencor said in a statement that the settlement resolves the SECs investigation into its options granting practices.

From July 1999 until mid-2002, KLA-Tencor's human-resources department was instructed to create a list of newly hired employees, wait several weeks, obtain a list of the company's closing stock price for the past several weeks, highlight the three or four lowest prices, and forward the list to the stock option committee, the SEC said. It was "a recipe for backdating that was followed for years," Dicko said.

Schroeder sat on the stock-option committee, and month after month routinely signed backdated option grant approvals without ever amoring the grants were accounted for appropriately, the SEC said. He made the approvals even after receiving a March 2001 memo from KLA-Tencor's general counsel saying that selecting options-grant dates after the fact would require the company to take a compensation charge and that doing so without disclosure could violate the law, the SEC said. Smart Nichola was general counsel of KLA-Tencor at the time.

In an essail back to the general counsel cited by the SEC, Schroeder wrote: "the compensation committee has given the stock option committee (Gary, Ken and I) power to set the price of stock options... Please don't take away some of my best tools for attracting and retaining people. We need those people to win the battle. Halp me, don't just tell me how to follow a strict interpretation of the rules. I need a 'war time counselor,' not someone who can recite page and verse."

The SEC alleged that Schroeder, besides wanting to attract and retain workers, was motivated in part by personal gain because he knew that he and other officers received options backdated to the same dates that the employees' options were. Schroeder's lawyer claims that his client didn't exercise the options granted while he was CEO, and made only \$26,000 from the backdated portion of one option granted to him while he was CEO.

"Other KLA-Teneur executives, some of whom are still with the company, made hundreds of thousands of dollars from the backdated portion of their options," Weiss said in a statement. "What the SHC is attempting to do is to recover gain from non-backdated

Schroeder; Nichols; and KLA-Tencor's chairman and founder, Kenneth Levy, resigned last year as the company acknowledged that some of its options were backdated. The SEC said in a release that its investigation is continuing.

KLA-Tencor shares rose 20 cents to \$59.51 on Wednesday.

By Siobhan Hughes, Dow Jones Newswires; 202-862-6654; siobhan hughes@dowjones.com

Exhibit 5

13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934

("Exchange Act") [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B)] and

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- Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule
 of the Federal Rules of Civil Procedure.
- 4. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.
- 5. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.
- 6. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein,
- 7. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.
- 8. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.
- 9. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory

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Document 2

Filed 07/25/2007 Page 3 of 8

organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the complaint in this action.

- 10. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent. Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.
- Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.
- 12. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.
- 13. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant

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(i) agrees to take all possible steps to make available its employees and agents to appear and be 1 interviewed by Commission staff at such times and places as the staff requests upon reasonable 2 notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the 3 Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena. 14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

2007

ダスペッシャ Name General court Title] For KLA-Tencor Corporation

Martin Brian a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Commission expires:

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Approved as to form:

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John H. Hemann, Esq. William H. Kimball, Esc.

Morgan, Lewis & Bockius LLP One Market, Spear Street Tower ODETTE H. DEVER ion # 1632812 Case 5:07-cv-03799-JW Document 2 Filed 07/25/2007) Page 5 of 8

Case 5:07-cv-03799-JW Document 2 Filed 07/25/2007 Page 7 of 8 restrained and enjoined from violating Section 13(a) of the Exchange Act [15 U.S.C. § 18m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], thereunder, by failing to file annual, quarterly and current reports in conformity with the Commission's integrated reporting and disclosure regulations, Regulations S-K and S-X, or by failing to include such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

Π.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and its agents, servants, employees, attorneys, and all persons in active concert or participation with any of them who receive actual notice of this Final Judgment, by personal service or otherwise, are permanently restrained and enjoined from any violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by failing, with respect to any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act or which is required to file reports pursuant to Section 15(d) of the Exchange Act, (A) to make and keep books, records, and accounts, which, in reasonable detail, accurately reflect the transactions and dispositions of the assets of the issuer; and (B) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- (a) transactions are executed in accordance with management's general or specific authorization;
- (b) transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (2) to maintain accountability for assets;
- (c) access to assets is permitted only in accordance with management's general or specific authorization; and
- (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

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Exhibit 6

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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| k Oue) |
| ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 |
| For the Fiscal Year Ended June 30, 2006 |
| OR |
| |

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Transition Period from To

Commission File No. 0-9992

KLA-TENCOR CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)

04-2564110 (LR.G. Employer Identification Number)

160 Rio Robles, San Jose, California (Address of Principal Executive Offices) 95134 (Zip Code)

Registrant's Telephone Number, Including Area Code: (408) 875-3000 Socurities Registered Purasant to Section 12(b) of the Act:

| | ar a |
|--|---|
| Title of Fach Clean | Rights of Early Kychtause on Which Resistered |
| Common Stock, \$0.001 Par Value Common Stock Parchase Rights | The Nasdaq Stock Market, Inc. |
| | at to Section $12(g)$ of the Act: (Class) |
| Indicate by check mark if the registrant is a well-known seasoned issuer, as | s defined in Rule 405 of the Securities Act. Yes 🗀 No 🔞 |
| Indicate by check mark if the registrant is not required to file reports pursu | |
| | ired to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 |
| Indicate by check mark if disclosure of delinquent filers pursuant to item 4 of registrant's knowledge, in definitive proxy or information statements inco $_{\rm I}$ 10-K. \Box | 05 of Regulation S-K is not contained herein, and will not be contained, to the reporated by reference in Part III of this Form 10-K or any amandment to this |
| Indicate by check mark whether the registrant is a large accelerated filer, as | n accelerated filer, or a non-accelerated filer. See definition of "accelerated file |

indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer is

Accelerated filer

Non-accelerated filer

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes 🗆 No 🗵

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant based upon the closing price of the registrant's stock, as of December 31, 2005, was \$5,554,245,988. Shares of common stock held by each officer and director and by each person or group who owns 5% or more of the outstanding common stock have been excluded in that such persons or groups may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The registrant had 199,725,957 shares of common stock outstanding as of December 31, 2006.

DOCUMENTS INCORPORATED BY REFERENCE

None

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Source: KLA TENCOR CORP, 10-K, January 29, 2007

| Lecation | Туре | Principal use | Square Postage | Ownerskip |
|----------------------|----------------|--|-------------------|-----------|
| Bundang, South Kores | Office | Sales and Service | 7,508 | Leased |
| Hsinchu, Taiwan | Office | Sales and Service | 95.601 | Leased |
| Taman, Taiwan | Office | Sales and Service | 7.294 | Lessed |
| Taipei, Taiwan | Office | Sales and Service | 6.914 | Leased |
| Shanghai, China | Office and R&D | Sales, Service, Engineering and Watchouse | 58,886 | Lénsed |
| Beijing, China | Office | Sales and Service | 5,716 | Leased |
| Chennai, India | Office | Engineering | 149,121 | Owned |

⁽¹⁾ Certain properties in San Jose, California and Livermore, California have been placed for sale in the quarter ended December 31, 2006.

We also lease office space for other, smaller sales and service offices in several locations throughout the world. Our operating leases expire at various times through June 30, 2015 with renewal options at the fair market value for additional periods up to five years. Additional information regarding these leases is incorporated by reference from Note 12 to Consolidated Financial Statements found under Item 8, "Financial Statements and Supplementary Deta" in this Annual Report on Form 10-K. We believe our properties are adequately maintained and suitable for their intended use and that our production facilities have capacity adequate for our current needs.

ITEM 3. LEGAL PROCEEDINGS

Special Committee Investigation of Historical Stock Option Practices

On May 22, 2006, the Wall Street Journal published an article about stock option backdating that questioned the stock option practices at several companies, including KLA-Tencor. On May 23, 2006, we received a subpoens from the United States Attorney's Office for the Northern District of California ("USAO") and a letter of inquiry from the United States Securities and Exchange Commission ("SEC") regarding our stock option practices. Later on May 23, 2006, our Board of Directors appointed a Special Committee composed solely of independent directors to conduct a comprehensive investigation of our historical stock option practices. The Special Committee promptly engaged independent legal commed and accounting experts to assist with the investigation. The investigation included an extensive review of our historical stock option practices, accounting records, supporting documentation, email communications and other documentation, as well as interviews of a number of current and former directors, officers and employees. On September 27, 2006, the Special Committee reported the bulk of its findings and recommendations to our Board of Directors.

Findings and Remedial Actions

On September 28, 2006, we amounced that we would have to restate our previously issued financial statements to correct our past accounting for stock options. As a result of the Special Committee investigation, we discovered that certain of our stock options, primarily those granted from July 1, 1997 to June 30, 2002, had been retroactively priced for all employees who received these grants. This means that the option exercise price was not the market price of the option shares on the actual grant date of the option, but instead was a lower market price on an earlier date. The actual grant date—when the essential actions necessary to grant the option were completed, including the final determination of the number of shares to be granted to each employee and the exercise price—is the correct measurement date to determine the market price of the option shares under the accounting rules in effect at the time. More than 95% of the total in-the-money value (market price on the actual grant date minus exercise price) of all of our retroactively priced options was attributable to those granted from July 1, 1997 to June 30, 2002.

We previously applied Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and its related Interpretations and provided the required pro-forms disclosures under Statement of

Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation," through our fiscal year ended June 30, 2005. Under APB Opinion No. 25, a non-cash, stock-based compensation expense was required to be recognized for any option for which the exercise price was below the market price on the actual grant date. Because each of our retroscrively priced options had an exercise price below the market price on the actual grant date, there should have been a non-cash charge for each of these options under APB Opinion No. 25 equal to the number of option shares, multiplied by the difference between the exercise price and the market price on the actual grant date. That expense should have been amortized over the vesting period of the option. Starting in our fiscal year ended June 30, 2006, we adopted SPAS No. 123(R), "Share-Based Payment." As a result, beginning in fiscal year 2006, the additional stock-based compensation expense required to be recorded for each retroscrively priced option is equal to the incremental fair value of the option on the actual grant date, amortized over the remaining vesting period of the option. We did not record these stock-based compensation expenses under APB Opinion No. 25 or SFAS No. 123(R) related to our retroactively priced options in our previously issued financial statements, and that is why we are restating them in this filing. To correct our past accounting for stock options, we recorded additional pre-tax, non-cash, stock-based compensation expense of (a) \$348 million for the periods July 1, 1994 to June 30, 2005 under APB Opinion No. 25 and (b) \$22 million for the year ended June 30, 2006 under SFAS No. 123(R). We expect to amortize an additional \$6 million of such pre-tax charges under SFAS No. 123(R) in future periods to properly account for past retroactively priced stock options.

By October 16, 2006, the Special Committee had substantially completed its investigation. The Special Committee concluded that (1) there was retruscrive pricing of stock options granted to all employees who received options, primarily during the periods from July 1, 1997 to June 30, 2002 (less than 15% of these options were granted to executive officers). (2) the retroactively priced options were not accounted for correctly in our previously issued financial statements, (3) the retroactive pricing of options was intentional, not inadvertent or through administrative error; (4) the retroactive pricing of options involved the selection of formitously low exercise prices by certain forther executive officers, and other former executives may have been aware of this conduct, (5) the retreactive pricing of options involved the falsification of Company records, resulting in erroacous statements being made in financial and other reports previously filed with the SEC, as well as in information previously provided to our independent registered public accounting firm, and (6) in most instances, the retreactive pricing of options violated the terms of our stock option plans. Because virtually all holders of retroactively priced options issued by the Company were not involved in or aware of the retroactive pricing, the Board of Directors decided that we should continue to honor the options that violated the terms of our stock option plans, except in certain individual cases as described below.

The Special Committee concluded that, with a few immaterial exceptions, the retroactive pricing of stock options stopped after June 30, 2002. After that time, there were procedures in place designed to provide reasonable assurance that stock options were priced on the grant date. The Special Committee also concluded that none of our independent Directors was involved in or aware of the retroactive pricing of stock options. Based on the Special Committee's report, our Board of Directors concluded that no current members of management were involved in the retroactive pricing of stock options. During its investigation of our historical stock option practices, the Special Committee did not find evidence of any other financial reporting or accounting issues.

As a result of the Special Committee investigation, on October 16, 2006, we terminated our employment relationship and agreement with Kenneth L. Schroeder, and we announced our intent to cancel all outstanding stock options held by Mr. Schroeder that were retroactively priced or otherwise impreperty granted. Those options were canceled in December 2006. Mr. Schroeder was the Company's Chief Executive Officer and a member of its Board of Directors from mid-1999 until January 1, 2006, and was a member of the Company's stock option committee from 1994 until December 31, 2005. From January 1, 2006 to October 16, 2006, Mr. Schroeder was employed as a Senior Advisor to the Company. On November 10, 2006, Mr. Schroeder's counsel informed us that Mr. Schroeder contests our right to terminate his employment relationship and agreement and to cancel any of his options. We intend to vigorously defend any claims that may be made by Mr. Schroeder regarding these matters, which could involve a material amount.

Also on October 16, 2006, Stuart J. Nichols, Vice President and General Counsel, resigned. Mr. Nichols and we entered into a Separation Agreement and General Release under which Mr. Nichols' sutstanding retreactively priced stock options have been re-priced by increasing the exercise price to the market price of the option shares on the actual grant date. Under SFAS No. 123(R), no incremental charge will be recognized in the financial statements for the quarter ended December 31, 2006.

On October 16, 2006, Kenneth Levy, Founder and Chairman of the Board of Directors of the Company, retired as a director and employee, and was named Chairman Emeritus by our Board of Directors. Mr. Levy and we entered into a Separation Agreement and General Release under which Mr. Levy's cutstanding retroactively priced stock options have been re-prized by increasing the exercise price to the market price of the option shares on the actual grant date. Under SFAS No. 123(R), no incremental charge will be recognized in the financial statements for the quarter ended December 31, 2006. Mr. Levy was the Company's Chief Executive Officer from 1975 until hid-1999 (with the exception of mid-1997 to mid-1998), was a member of the Company's Board of Directors from 1975 until his retirement, was Chairman of the Board of Directors from 1999 until his retirement, and was a member of the Company's stock option committee from 1994 until use of that committee was suspended in the fall of 2006.

On December 21, 2006, Jon D. Tompkins resigned as a director of the Company, and we agreed to modify the outstanding options held by Mr. Tompkins (all of which were fully vested) to extend the post-termination exercisability period to December 31, 2007, which is the last day of the calendar year in which those options would have terminated in the absence of such extension. Mr. Tompkins, the Chief Executive Officer of Tencor Instruments before its merger into the Company in mid-1997, was the Company's Chief Executive Officer from mid-1997 to mid-1998, was a member of the Company's stock option committee from mid-1997 until mid-1999, and was a member of the Company's Board of Directors from mid-1997 until his resignation.

Although the Board of Directors concluded that John H. Kispert, our President and Chief Operating Officer, was not involved in and was not aware of the improper stock option practices, based on the Special Committee's recommendation, his outstanding retroactively priced options have been re-priced because he served as Chief Financial Officer during part of the period in question. This re-pricing involved increasing the exercise price to the market price of the option shares on the actual grant date. Under SFAS No. 123(R), no incremental charge will be recognized in the financial statements for the quarter ended December 31, 2006.

After the Special Committee substantially completed its investigation, a number of follow-up activities continued, especially in connection with the preparation of this Annual Report on Form 10-K and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006. The Special Committee also continues to assist the Company in connection with the government inquiries described below. Additional follow-up activities may be required.

Government Inquiries Relating to Historical Stock Option Practices

On May 23, 2006, we received a subpoena from the USAO requesting information relating to our past stock option grants and related accounting matters. Also on May 23, 2006, we received a letter from the SPC making an informal inquiry and request for information on the same subject matters. We are cooperating fully with the USAO and SEC inquiries and intend to continue to do so. These inquiries likely will require us to expend significant management time and incur significant legal and other expenses, and could result in civil and criminal actions seeking, among other things, injunctions against the Company and the payment of significant fines and penalties by the Company, which may adversely affect our results of operations and cash flow.

We have also responded to inquiries from the U.S. Department of Labor, which is conducting an examination of our 401(k) Savings Plan. We are cooperating fully with this examination and intend to continue to do so.

We cannot predict how long it will take to or how much more time and resources we will have to expend to resolve these government inquiries, nor can we predict the outcome of these inquiries. Also, there can be no assurance that other inquiries, investigations or actions will not be started by other United States federal or state regulatory agencies or by foreign governmental agencies.

Late SEC Filings and Nasdag Delisting Proceedings

Due to the Special Committee investigation and the resulting restatements, we did not file on time this Annual Report on Form 10-K and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006. As a result, we received two Nasdaq Staff Determination letters, dated September 14, 2006 and November 14, 2006, respectively, stating that we were not in compliance with the filing requirements of Marketplace Rule 4310(c)(14) and, therefore, that our stock was subject to delisting from the Nasdaq Global Select Market. We appealed this determination and requested a hearing before a Nasdaq Listing Qualifications Panel. On October 26, 2006, we attended a hearing, at which we sought appropriate exceptions to the filing requirements from the Panel pending completion and filing of our delinquent reports. On January 3, 2007, the Panel granted our request for continued listing of our stock on the Nasdaq Global Select Market, subject to the condition that we file this Report and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 on or before January 31, 2007.

With the filing of this Report and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006, we believe we have returned to full compliance with SEC reporting requirements and Nasdaq listing requirements, and, therefore, that the Nasdaq delisting matter is now closed. However, we cannot predict whether the SEC will review these Reports and, if so, whether the SEC will have comments on these Reports (or other reports that we previously filed) that may require us to file amended reports with the SEC. In addition, we cannot predict whether the Nasdaq Listing Qualifications Panel will concur that we are in compliance with all relevant listing requirements. If either of those events occurs, we might be unable to remain in compliance with SEC reporting requirements and Nasdaq listing requirements, and, therefore, we might be unable to maintain an effective listing of our common stock on the Nasdaq Global Select Market or any other national securities exchange.

Shareholder Derivative Litigation Relating to Historical Stock Option Practices

Beginning on May 22, 2006, soveral persons and entities identifying themselves as shareholders of KLA-Tencor filed derivative actions purporting to assert chains on behalf of and in the name of the Company against various of our current and former directors and officers relating to our accounting for stock options issued from 1994 to the present. The complaints in these actions allege that the individual defendants breached their fiduciary duties and other obligations to the Company and violated state and federal securities laws in connection with our historical stock option granting process, our accounting for past stock options, and historical sales of stock by the individual defendants. Three substantially similar actions are pending, one in the U.S. District Court for the Northern District of California (which consists of three separate lawsuits consolidated in one action); one in the California Superior Court for Santa Clara County; and one in the Delaware Chancery Court.

The plaintiffs in the derivative actions have asserted claims for violations of Sections 10(b) (including Rule 10b-5 thereunder), 14(a), and 20(a) of the Securities Exchange Act of 1934, unjust enrichment, breach of fiduciary duty and aiding and abetting such breach, negligence, misappropriation of information, abuse of control, gross mismanagement, waste of corporate assets, breach of contract, constructive fraud, rescission, and violations of California Corporations Code section 25402, as well as a claim for an accounting of all stock option grants made to the named defendants. KLA-Tencor is named as a nominal defendant in these actions. On behalf of KLA-Tencor, the plaintiffs seek unspecified monetary and other relief against the named defendants. The plaintiffs are Jumes Zlolkowski, Mark Ziering, Alask Electrical Peasion Fund, Jeffrey Rabin, and Benjamin Langford. The individual named defendants are current directors and officers; Edward W. Barnholt, H. Raymond Bingham, Robert T. Bond, Jeffrey R. Hall, Stephen P. Kaufman, John H. Kispert, Lida Urbanek and Richard P. Wallace; and former directors and officers; Robert J. Boekilke, Leo Chamberlain, Gury E. Dickerson, Richard J. Elkus, Jr., Dennis J. Fortino, Kenneth Levy, Michael E. Marks, Stuart J. Nichots, Arthur P. Schnitzer, Kenneth L. Schroeder and Joa D. Tempkins. Current director David C. Wang and former director Dean O. Morton were originally named as defendants in one of the derivative actions filed in the U.S. District Court for the Northern District of California, but were dropped as named defendants as of December 22, 2006 upon the filing of a consolidated complaint in that action.

The derivative actions are at an early stage. Discovery has not commenced, and the defendants are not yet required to respond to the complaints. Our Board of Directors has appointed a Special Litigation Committee ("SLC") composed solely of independent directors to conduct an independent investigation of the claims asserted in the derivative actions and to determine the Company's position with respect to those claims. The SLC's investigation is in progress. We cannot predict whether these actions are likely to result in any material recovery by or expense to KLA-Tencor.

Shareholder Class Action Litigation Relating to Historical Stock Option Practices

KLA-Tencor and various of our current and former directors and officers were named as defendants in a putative securities class action filed on June 29, 2006 in the U.S. District Court for the Northern District of California. Two similar actions were filed later in the same court, and all three cases have been consolidated into one action. The complaints allege claims under the Securities Exchange Act of 1934 as a result of our past stock option grants and related accounting and reporting, and seek unspecified monetary damages and other relief. The plaintiffs seek to represent a class consisting of purchasers of KLA-Tencor stock between February 13, 2001 and May 22, 2006 who allegedly suffered lesses as a result of material misrepresentations in KLA-Tencor's SEC filings during that period. The lead plaintiffs, who seek to represent the class, are the Police and Fire Retirement System of the City of Detroit, the Louisiana Municipal Police Employees' Retirement System, and the City of Philadelphia Board of Pensions and Retirement. The defendants are KLA-Tencor, Edward W. Barnholt, H. Raymond Bingham, Robert J. Boehlke, Robert T. Bond, Gary E. Dickerson, Richard J. Elkus, Jr., Jeffrey L. Hall, Stephen P. Kaufman, John H. Kispert, Kenneth Levy, Michael E. Marks, Kenneth L. Schroeder, Jon D. Tompkins, Lida Urbanek and Richard P. Wallace.

This litigation is at an early stage. Discovery has not commenced, the court has not yet determined whether the plaintiffs may sue on behalf of any class of purchasers, and the defendants are not yet required to respond to the complaints. The Company intends to vigorously defend this litigation.

As part of a derivative lawsuit filed in the Delaware Chancery Court on July 21, 2006 (described above), a plaintiff claiming to be a KLA-Tencor shareholder also asserted a separate putative class action claim against KLA-Tencor and certain of our current and former directors and officers alleging that shareholders incurred damage due to purported dilution of KLA-Tencor common stock resulting from historical stock option granting practices. The Company intends to vigorously defend this litigation.

We cannot predict the outcome of the shareholder class action cases (described above), and we cannot estimate the likelihood or potential dollar amount of any adverse results. However, an unfavorable outcome in this litigation could have a material adverse impact upon our financial position, results of operations or cash flows for the period in which the outcome occurs and in future periods.

Indemnification Obligations

Subject to certain limitations, we are obligated to indemnify our current and former directors, officers and employees in connection with the investigation of our historical stock option practices and related government inquiries and litigation. These obligations arise under the terms of our certificate of incorporation, our bylaws, applicable contracts, and Delaware and California law. The obligation to indemnify generally means that we are required to pay or reimburse the individuals' reasonable legal expenses and possibly damages and other liabilities incurred in connection with these matters. We are currently paying or reimbursing legal expenses being incurred in connection with these matters by a number of our current and former directors, officers and employees. Although the maximum petential amount of future payments KLA-Tencor could be required to make under these agreements is theoretically unlimited, the Company believes the fair value of this liability is adéquately covered within the reserves it has established for currently pending legal proceedings.

January 26, 2007

January 26, 2007

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

KLA-Tencor Corporation

| By: /s/ RICHARD P. WALLACE Richard P. Wellece Chief Executive Officer | | | | |
|--|--|--|--|--|
| 934, this report has been signed below by the following person | ns on behalf of the registra | | | |
| Title | Dole | | | |
| Chief Executive Officer and Director (principal executive officer) | January 26, 2007 | | | |
| Senior Vice President and Chief Pinancial Officer (principal financial officer and principal accounting officer) | January 26, 2007 | | | |
| Chairman of the Board and Director | January 26, 2007 | | | |
| Director | January 26, 2007 | | | |
| Director | January 26, 2007 | | | |
| Director | January 26, 2007 | | | |
| | Richard P. Wei Chief Executive 0 934, this report has been signed below by the following person The Chief Executive Officer and Director (principal executive officer) Senior Vice President and Chief Financial Officer (principal financial officer and principal accounting officer) Chairman of the Board and Director Director | | | |

13]

Director

Director

/s/ Lina Urranek Lida Urbanek

/s/ DAVID C. WANG

David C. Wang

Case-5:077-cv-037798-JW Document 40-8 Filed 02/01/2008 Page 1:054 62

Exhibit 7

UNITED STATES SECURITIES AND EXCHANGE COMMISSION **WASHINGTON, D.C. 20549**

FORM 8-K

CURRENT REPORT Pursuant To Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported); May 22, 2006

KLA-TENCOR CORPORATION

(Fixact Name of Registrant as Specified in Charter)

Delaware (State or Other Jurisdiction of Incorporation)

000-09992 (Commission File Number)

04-2564110 (IRS Employer Identification No.)

160 Rio Robles San Jose, California 95134 (Address of Principal Executive Offices) Registrant's telephone number, including area code: (408) 875-3000

NΆ

(Former Name or Former Address, if Changed Since Last Report)

| Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2, below): | | | |
|--|---|--|--|
| | □ | Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425) | |
| | | Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12) | |
| | | Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)) | |
| | | Pro-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)) | |
| | | | |

Item 8.01 Other Events.

KLA-Tencor Corporation announced today that its Board of Directors has appointed a Special Committee of independent directors to conduct an internal investigation relating to past stock option grants, the timing of such grants and related accounting and documentation. The Special Committee will be assisted by outside legal counsel and accounting experts. KLA-Tencor also said that it has received subposens from the U.S. Attorney's Offices for the Eastern District of New York and Northern District of California requesting information relating to its past stock option grants. KLA-Tencor said that it will cooperate fully with any government or regulatory investigation into these matters. KLA-Tencor further disclosed that on May 22, 2006, it was served with a complaint relating to a lawsuit filed in the United States District Court for the Northern District of California filed by the Theodore R. Kornreich Revocable Trust, derivatively on behalf of KLA-Tencor.

Source: KLATENCOR CORP, 8-K, May 24, 2006

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as smended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

| | | | KLA-TENCOR CORPORATION | | |
|-------|------------------|-------------------|------------------------|----------------------|---|
| Date: | May 24, 2006 | | Ву: | /s/Stuart J. Nichols | |
| | | | | Name: Title: | Stuart J. Nichols Vice President and General Counsel |
| Creat | ted by 10KWizard | www.10KWizard.com | + | | |

Source: KLA TENCOR CORP, 8-K, May 24, 2006

Case 5:07-cv-03798-JW

Exhibit 8

Morgan, Lewis & Bocklos LIP One Market, Spear Street Tower San Francisco, CA 94105 Tel: 415.442,1000 Fáx: 415.442,1001 www.morganiewis.com

Morgan Lewis

Matthew Mighael Haut Paralegal 415.442.1428 methow.hauttimprocessiowis.com

June 29, 2007

FOIA CONFIDENTIAL TREATMENT REQUESTED BY KLA-TENCOR CORPORATION PURSUANT TO 17 C.F.R. 200.83

Office of Freedom of Information and Privacy Act Operations U.S. Securities and Exchange Commission Operations Center 100 F Street, N.E. Washington, DC 20549

Re: In the Matter of KLA-Tencor Corp. (SF-3120)

Dear Sir or Madam:

On behalf of our client, KLA-Tencor Corporation, we made a presentation to the Staff of the San Francisco, California Offices of the U.S. Securities and Exchange Commission (the "Commission") which consisted of PowerPoint slides [copy of slides attached] and certain supporting materials (the "Materials") on June 8, 2007. The Materials, and the information contained therein, represent information that is privileged and confidential within the contemplation of the applicable provisions of the Preedom of Information Act ("FOIA"), and the rules of the Commission implementing that Act, 17 C.F.R. Sections 200.80 & .83, and is furnished solely for the use of the Commission. Accordingly, we request that the Materials and the information contained therein be afforded confidential treatment pursuant to FOIA and the rules of the Commission implementing the Act.

We also request confidential treatment of the letters transmitting the Materials because they relate to information that is itself privileged and confidential.

Morgan Lewis

June 29, 2007

FOIA CONFIDENTIAL TREATMENT REQUESTED BY KLA-TENCOR CORPORATION **PURSUANT TO 17 C.F.R. 200.83** Page 2

Please acknowledge receipt of this letter by signing in the space provided on the enclosed duplicate copy of this letter and returning it to me in the enclosed self-addressed, postage prepaid envelops.

Sincerely,

Matthew Michael Haut

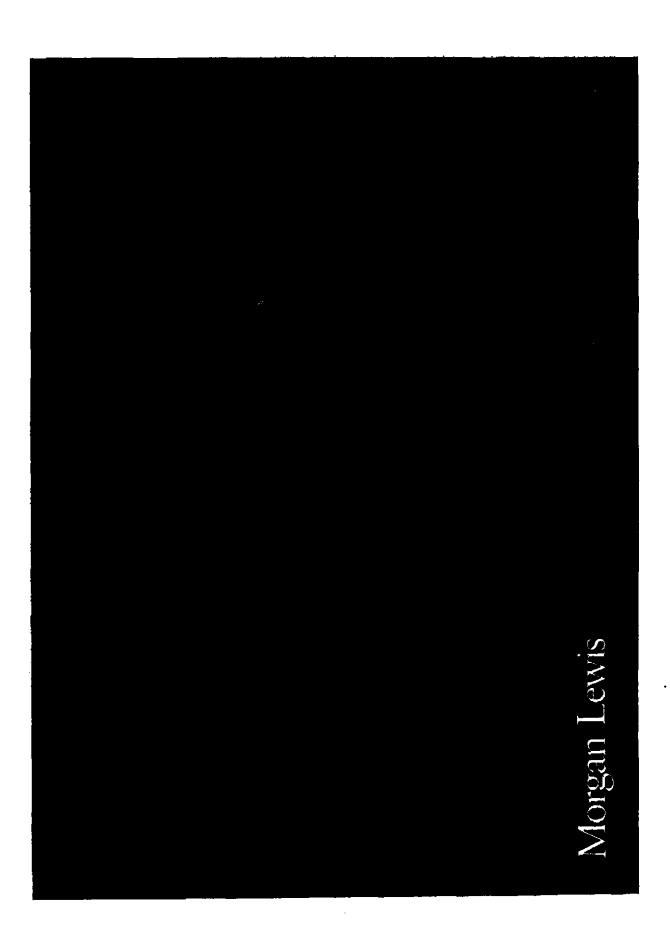
Enclosures

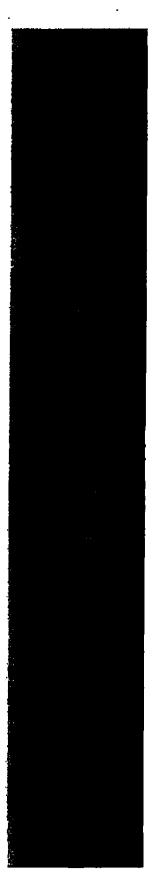
cc: Ms. Elena Ro

John H. Hemann (w/o encl.) William H. Kimball (w/o encl.)

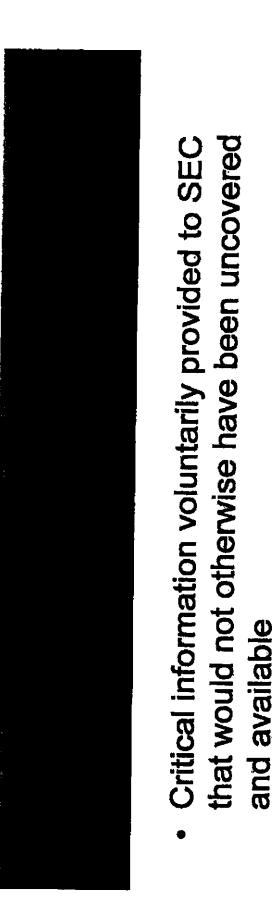
RECEIPT ACKNOWLEDGED:

FOIA Officer





- Cooperation has been exemplary by all accounts and was designed to expedite SEC investigation
- Immediately shared attorney-client privileged information pursuant to confidentiality agreement
- Immediately shared results of Special Committee investigation with SEC staff
- Immediately provided critical documents in manner designed to assist SEC staff
- Promptly responded to every request for documents or information



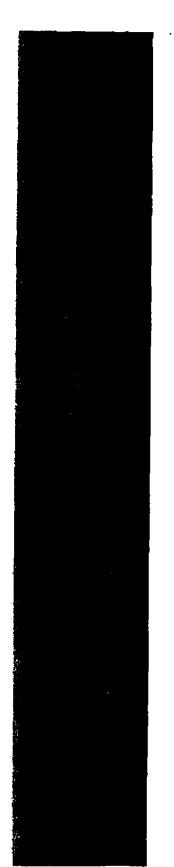
- Privileged Special Committee documents
- Privileged Company documents
- Privileged witness interviews



- Privileged Special Committee Documents
- Interview memoranda of over 60 witnesses
- Presentations to SEC and DOJ
- PowerPoint presentations

To Board of Directors

To Auditors



- Privileged Company Documents
- Stu Nichols memorandum and related e-mail
- Lisa Berry memoranda and related e-mail
- E-mail and other documents prepared by outside counsel





Privileged and Confidential

Date: March 19, 2001

To: Ken Schroeder From: Stu Nichols

cc. Maureen Lamb, John Kispert, Joy Nyberg

Re: Stock Option Pricing

memo is clarify and set forth the basis for the rules regarding stock option pricing of option grants Recently, several questions have been raised regarding the mechanics behind stock option pricing, both generally and specifically with respect to officer option grants. The purpose of this to company officers.

In order to avoid certain adverse accounting consequences, those employees

Via Facsimile

Wilson Sonsini Goodrich & Rosatt Larry W. Sonsini, Esq. Ö

Judith Mayer O'Brien 190

From: Lisa C. Berry

Vice President, General Counsel

November 14; 1998 **Date:** November 17, 1998 Board Meeting <u>%</u>

Morgan Lewis being August 31 but it was not determined until September 30 that the August 31 date repricing options had to turn in the requisite paperwork by a set date (August 31). We at some time during the 30 days following August 31 and set the price for repricing at that time in order to mandanize the value to employees. The reprising date ended up was the correct date. The repricing date was also to be the date for the grant of got approval from PricewaterhouseCoopers to have the Stock Option Committee meet

F.O.I.A. Confidential Treatment Requested

"in lieu" options.

Morgan Lewis

Stern, Roger Prom: Sent

Sunday, March 7, 2004 1:26 PM.

DiMarco, Bret To:

Old KLA Option timing e-mail Subject:

REDACTED

Bret:

down that old e-mail/memo that you ghost-wrote for Stu on the option grant cherrypicking issues (when they were using the brue machine to pick key state prices). I frought it would be handy if I could track

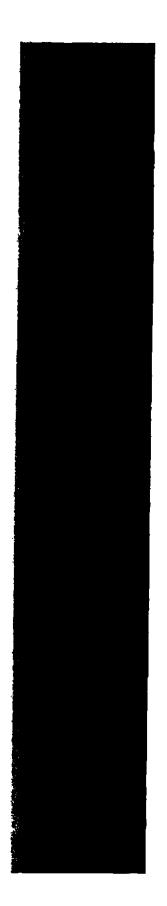
Roger Stem

Employee Benefits & Compensation Group Willeon, Sonaini, Goodrich & Rosasi

Ph. 650-320-4618 (direct)

Fax: 650-468-6611

F.O.I.A. Confidential Treatment Requested



- Company Document Productions Designed to Assist and Expedite SEC Investigation
- Witness binders highlighting relevant documents
- Productions made on timely basis as requested
- Witness Availability
- All requested witnesses made available on timely basis, including current and former employees
- Privileged Witness Interviews

Morgan Lewis

F.O.I.A. Confidential Treatment Requested

Exhibit 9

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|----------|---------------------------------------|--------|
| | | Page 1 |
| 1 | UNITED STATES DISTRICT COURT | |
| 2 | NORTHERN DISTRICT OF CALIFORNIA | |
| 3 | · SAN JOSE DIVISION | |
| 4 | SECURITIES AND EXCHANGE | |
| | COMMISSION, | |
| 5 | | |
| | Plaintiff, | |
| 6 | | |
| | vs. No. C 07-3798-JW | |
| 7 | · | |
| | KENNETH L. SCHROEDER, | |
| 8 | | |
| | Defendant. | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | DEPOSITION OF STUART J. NICHOLS, Esq. | |
| 16 | Sunday, January 27, 2008 | |
| 17 | VOLUME I (Pages 1-230) | |
| 18 | • | i |
| 19 | | |
| 20 | SHEILA CHASE & ASSOCIATES | |
| | REPORTING FOR: | |
| 21 | LiveNote World Service | |
| | 221 Main Street, Suite 1250 | |
| 22 | San Francisco, California 94105 | |
| | Phone: (415) 321-2300 | |
| 23 | Fax: (415) 618-0743 | |
| 24 | | |
| | Reported by: | |
| 25 | JANIS JENNINGS, CSR, CRP | 1 |
| <u> </u> | | |

| Nichols, S | Stuart J. Esq. | 1/27/2008 |
|---|--|-----------|
| Page 2 1 2 3 4 5 6 Deposition of STUART NICHOLS, taken on behalf of the Defendant, at DLA PIPER, 2000 University Avenue, East Palo Alto, California, beginning at 9:48 A.M. on Sunday, January 27, 2008, before JANIS L. JENNINGS, Certified Shorthand Reporter No. 3942, CRP 12 13 14 15 16 17 18 19 20 21 22 23 24 25 | 1 A P P E A R A N C E S (Continued) 2 3 For Kl.A-Tencor Corporation: 4 JOHN H. HEMANN, ESQ. 5 TERA M. HEINTZ, ESQ. MORGAN, LEWIS & BOCKIUS LLP 6 One Market, Spear Street Tower San Francisco, California 94105 7 Phone: 415.442.1000 8 Fax: 415.442.1001 jhemann@morganlewis.com 9 theintz@morganlewis.com 10 11 For the Deponent: 12 13 MARK A. BELNICK, ESQ. 14 LAW OFFICES OF MARK A. BELNICK, LLC 15 120 West 45th Street, Suite 1700B 16 New York, New York 10036 17 Phone: 646.453.2908 19 mbelnick@belnicklaw.com 20 21 22 Also Present: 23 Margaret Austin, Payalegal 24 Gary Brewer, Videographer 25 | Page 4 |
| Page 3 APPEARANCES Por the United States Securities and Exchange Commission: MARK P. FICKES, ESC. FLENA 80, FSC. LINITED STATES SECURITIES AND EXCHANGE COMMISSION 44 Montgomery Street, Soite 2600 San Francisco, Colifornia 94104 Phone: 415,785,2338 fickesmore sec. gov. roccu sect.gov Por the Defendant Kenneth L. Schroeder: SHIRLI FABERI WPISS, 1842. DI A PIPER US LLP 401 B Street, Soite 700 San Diego, Colifornia 92101—1297 Phone of 9 000 2701 Fact 10-000,2701 Afth websor dispiper.com 44 DEPPREY B. COMPERSHITH, FSC. DI A. PIPER US LP 701 Fifth Systems. Saite 7000 Secule. Washington 98101-2014 Phone: 200,370,4801 Fact 200,370,4801 place: 200,370,4801 | 1 | Page 5 |

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| Page 6 | | Page |
| INDEX (Continued) | 1 1N D E X (Continued) | |
| EXPRISTS | EXHIBITS | |
| No. Description Page | 3 No. Description Page | |
| Exhibit 51 Letter dated 10 18 99 to Stuart | Exhibit 72 Email with attachment from Stuart | |
| Nichols; New, 84.12 K3.A-SEC 00016923 through 16924 65 | 8 Nichola dated 3 14:11: Nos. KT ACWP-PRIVIORO1905 (Brough 1909 198) | |
| Fighthin 32. Letter dated 10.7 90 to Staint | 6 Exhibit 73 Email with attachment from Roger | |
| Nichola: Nos. MK0003340-34) 65 Exhibit 53 Nest Hire Form: No. MLB KLA-SEC00016903 65 | 7 Stem dated 3 14 01; Nos. KT ACWP-PRIV60002365 through 2370 198 | |
| Exhibit 54 Minutes of the Meeting of the Hearth of Directors of KLA-1 encar Corporation | 8 Exhibit 74 Email thread with attachment from | |
| November 16, 1999; Nos. KLS-SEC(3)2735 (brough 2739 | 9 Rest DiMuses dated 3 14 U1; Nos. KT ACWP-PRIVODED 1328 through 3381 198 | |
| Eshibi 55 Memo dated 1.5 III) from Susar Nichols; | 60 Exhibit 75 Email thread from Dret DiMarco dated | |
| Nos. KT ACWP-PRIVIDIDIA 298 (hough 1304 - 114 Exhibit 26 Email thread from Stuart Nichols dated | 11 3 14 01; Nas. KT ACWP:PRIV00001327 | |
| 1 6 2000; Nes. KTACTVP-PRIVIRANI938 through 4940 | 12 | |
| Exhibit 57 Minutes of the Meeting of the Hound of | Exhibit 76 Email thread with attachment from 13 Seline Lupez dated § 14-01; Nos. | |
| Directors KLA- Lencer Corporation January 25, 2000; Nos. All J. KLA-SECOMO 1998 January 2004. | KT ACWP-PRIV@0042371 (becomb 2377 198 | |
| through 2001 132 | ### ### ### ### ### ### ### ### ### ## | |
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| through 51400 133 | 17 Exhibit 79 Finail thread from Stuart Nichols dated | |
| Exhibit 59. Minutes of the Meeting of the Board of Directors of KLA-Tericus Corporation | 18 3-22 D1: No. KT ACWP-PRIVO0001817 198 19 Exhibit 80 Essail thread from Roger Storn dated | |
| April 23, 2000; Nov. Miles K. LA-SEC (1882-1983) through 21984 176 | 3-22-01; No. KLA-SEC000097 198 | |
| Exhibit 60 KLA-Tencor Historical Stock Prices; 20 pages 153 | Eahibit 81 Emnil thread from Stuart Nichols dated 21 3 22-01; No. KT ACWP-PRIV00002389 198 | |
| Exhibit 61 Limail thread of Stuart Nichols dated | 22 Exhibit K2 Email Oread from Stonet Nichols dated 3 22/01; Nos. KT ACWP-PRIVIDO02397 | |
| 10 9 00: Nos. MLB KLA-SECT002298) through 22982 155 | 2.3 through 2309 199 24 Eshibit 83 Complaint 202 | |
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| 1 | EAST PALO ALTO, CALIFORNIA; | 1 | EXAMINATION |
| 2 | SUNDAY, JANUARY 27, 2008; 9:48 A.M. | 2 | BY MS. WEISS: |
| 3 | oOo | 3 | Q. Good morning, sir. Would you please state |
| 4 | (Whereupon, Exhibits 41 through 49 | 4 | your full name and spell your last name for the |
| 5 | were marked for identification off | 5 | record. |
| 6 | the record) | 6 | A. Stuart John Nichols. My last name is |
| 7 | THE VIDEOGRAPHER: Good morning. We're | 7 | spelled N-i-c-h-o-l-s. |
| 8 | going on the record. | 8 | Q. Mr. Nichols, my name is Shirli Weiss. I |
| 9 | Here marks the beginning of videotape | 9 | represent Kenneth Schroeder who is the defendant in |
| 10 | No. 1, Volume I, in the deposition of Stuart J. | 10 | this action. You are here pursuant to a subpoena |
| 11 | Nichols in the matter of Securities and Exchange | 11 | served on your counsel with agreements from him to |
| 12 | Commission versus Kenneth L. Schroeder, in the | 12 | accept it on your behalf. |
| 13 | United States District Court, Northern District | 13 | I'm going to be asking you some questions |
| 14 | of California, case No. C 07-3798-JW. | 14 | about the action and my questions and your answers |
| 15 | Today's date is January 27th, 2008, and | 15 | will be taken down by the court reporter. |
| 16 17 | the time is 9:48 a.m. | 16 | So that we have a clear record, I'll ask |
| 17 | The video operator today is Gary Brewer | 17 | that you wait until I finish my question before you |
| | representing LiveNote World Service, located at | 18 | commence your answer, and I'll want until you finish |
| 19 20 | 221 Main Street, Suite 1250, San Francisco, | 19 | your answer before I commence my next question. |
| 21 | California, 94105. The phone number is 415-321-2300. | 20 | Can we have that agreement? |
| 22 | | 21 | A. Yes. |
| 23 | The court reporter is Janis Jennings of LiveNote. | 22 | Q. You are a member of the California Bar, |
| 24 | Would counsel please identify themselves | 23 24 | are you, sir? A. Yes. |
| 25 | and state whom they represent. | 25 | |
| | and make whom may topicocate | 25 | Q. Can you tell me if you are a member of any |
| | Page 11 | | Päge 13 |
| 1 | MS. WEISS: Good morning. My name is | ١, | |
| 2 | Shirli Weiss. I'm from DLA Piper and I represent | 1 | other bar in the United States? |
| 3 | the Defendant Kenneth L. Schroeder | 2 | A. Yes. O. Which bar? |
| 4 | MR. COOPERSMITH: I'm Jeff Coopersmith | 4 | A. No, I can tell you. The answer is no, but |
| 5 | also with DLA Piper and I also represent Kenneth | 5 | you asked me whether I can tell you. And the answer |
| 6 | Schroeder. | 6 | is: No, I'm not a member of another bar. |
| 7 | MR. BELNICK: I'm Mark Belnick and I | 7 | Q. Okay. When did you become a member of the |
| 8 | represent the witness Stuart Nichols, | 8 | California Bar? |
| 9 | MR. HEMANN: John Hemann of Morgan Lewis | 9 | A. 1987. |
| 10 | on behalf of KLA-Tencor. | 10 | Q. Were there any interruptions to that |
| 11 | MS. HEINTZ: Tera Heintz from Morgan Lewis | 11 | membership? |
| 12 | on behalf of KLA-Tencor. | 12 | A. No. |
| 13 | MR. FICKES: Mark Fickes on behalf of the | 13 | Q. You remain a member today; is that |
| 14 | Securities and Exchange Commission. | 14 | correct? |
| 1.5 | MS. RO: Elena Ro on behalf of the | 15 | A. Yes. |
| 16 | Securities and Exchange Commission. | 16 | Q. And that means that you're a lawyer; |
| 17 | THE VIDEOGRAPHER: Okay. If there are no | 17 | correct? |
| 18 | stipulations, the reporter may administer the oath. | 18 | A. Correct. |
| 19 20 | | 19 | Q. And you understand that you're under oath |
| | STUART NICHOLS, | 20 | to tell the truth? |

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testified as follows:

The deponent herein, was sworn and

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A. Yes.

A. Yes.

Q. And do you understand that if you lie, you could be subject to penalty of perjury?

Q. And you understand that if you respond "I

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do not remember" when in fact you do remember, that 2 that is a lie?

A. Yes.

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- 4 Q. And you understand that if you respond that you do not know the answer to the question when 5 in fact you do know the answer to the question, that 6 7 that also is a lie?
 - A. Yes.
- 9 Q. Sir, you can take a break at any time. 10 Just indicate to your counsel and we'll go off the 11 record by agreement. However, we will not go off the record until all of the parties to the 12 deposition agree that we can go off the record. 13

14 Could you tell me what your current 15 address is, please.

- 16 A. 704 Vera Cruz Avenue, Los Altos, 17 California.
 - Q. Are you currently employed?
- 19 A. Yes.
- 20 Q. What is the name and address of your 21 employer?
- 22 A. MIPS Technologies, Inc. The address the headquarters address is 1225 Charleston Avenue, 23
- 24 Mountain View, California. 25
 - Q. Is "MIPS" short for anything?

custodian of records-type depositions. I've done 2 that several times.

- 3 Q. And were you testifying as a custodian of 4 records at that deposition?
 - A. Yes.
 - Q. And was that for MIPS?
 - A. No. As I said, I haven't had my deposition taken for a year and a half.
 - Q. I see. Was that for KLA-Tencor?
- A. Yes. 10
- 11 Q. Who brought that litigation?
 - A. Well, your question assumes that there was only one instance, but I think I said there were several, and there were. I don't remember specifically whether it was -- these were cases that we brought or whether they were cases that were brought by -- against us where we were a defendant,
- or where we were simply a third party that was 18
- 19 producing documents in a litigation matter to which 20 we were not a party.
 - Q. Did you testify at all in the litigation that you most recently testified in as a percipient witness at all?
- 24 A. I do not believe so.
 - Q. All right. Prior to that deposition, had

Page 15

- - Q. When did you become employed by MIPS?
- 3 November of 2007.
- 4 Q. What is the nature of your employment at 5 MIPS?
 - A. I'm the general counsel of the company.
- 7 Q. I forgot to ask you, Mr. Nichols: Have 8 you taken any medication that you believe might 9 impair your ability to testify truthfully today?
- 10 A. No.
- Q. Have you been deposed before? 11
- 12 A. Yes. 13
 - Q. When was the last time you were deposed?
- 14 A. It has been at least a year and a half. I 15 don't know exactly.
- Q. Was the deposition in the context of -16 17 was it related to KLA's option dating practices?
- 18 A. No.

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- Q. What was the context of that deposition?
- A. I don't specifically remember, but it was 20
- 21 not an uncommon thing for me to be deposed in the
- context of subpoenas of records. They would need 22
- 23 someone to testify regarding the effort that was 24
- made; in the context of litigation, of course.
- There were requests for production and I would give

you been deposed before?

A. Yes.

Q. And what was the context of the most recent deposition prior to that one?

4 5 A. Well, again, there were several instances

6 where I was deposed as in the capacity of a custodian of record - of records. But I can't 8 distinguish, you know, when they happened or .--9

they were fairly trivial types of depositions. Q. All right. Let's put those aside.

Can you call to mind any depositions that you gave where you testified as a percipient witness?

And do you know what I mean when I say "percipient"?

- A. Yes. I can remember one instance where I testified as a 30(b)(6) witness.
 - Q. Was that also on behalf of KLA-Tencor?
- A. No.
- 20 Q. What company was that on behalf of?
- 21 A. This was when I was employed by Varian
- 22 Associates, Inc.
- 23 Q. All right. Putting that aside, can you
- 24 think of any circumstances where you've testified as
- a percipient witness?

5 (Pages 14 to 17)

Nichols, Stuart J. Esq.

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- A. There may have been an instance where I testified while at KLA as a 30(b)(6) witness on some sort of issue about our subsidiary structure. I don't distinctly remember it, but I have a vague memory that I did do that at one point.
- O. Any other circumstances that you can recall where you testified as a percipient witness?
- A. Yes.

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- 9 Q. Okay. Please identify the first that 10 comes to mind,
- A. The first that comes to mind was a 11 deposition in connection with a wrongful termination 12 13 and trade secret matter.
- 14 Q. Were you a party in that matter or a 15 witness: a nonparty witness?
 - A. I was a nonparty witness.
- 17 Q. Just identify who the litigants were in 18 that matter.
- A. I no longer remember the name of the 19 plaintiff. The defendant was Varian Associates, 20 21 Inc.
- 22 Q. I'm sorry. Did you say "Varian"?
- 23 A. Varian.
- 24 Q. Okay. And you said that was a wrongful
- termination?

who sits to your right?

- A. Yes.
- Q. All right. Mr. John Hemann has asked to attend today's deposition. Mr. Hemann is outside counsel, as I understand it, for K1.A-Tencor.

Have you met with Mr. Hemann in connection with your deposition today?

- A. No.
- Q Q. If I refer to "KLA option practices," I'm 10 referring to the broad spectrum of KLA's option practices during the entire time period of your 12 tenure with the company and thereafter just as a 13 broad shorthand.

14 Have you met with the agents of the SEC 15 prior to today in connection with KLA's option practices? 16

- A. Yes.
- 18 O. How many times can you recall meeting with 19 agents of the SEC?
 - A. Once,
- 21 Q. The approximate time period, do you 22 recall?
 - I believe it was late 2006.
- 24 Q. Do you keep a calendar that would tell you the day that you met with the SEC?

Page 19

- A. Yes.
- 2 Q. Were you general counsel when you were at 3 Varian?
- 4 A. No.

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- Q. How long ago was that deposition given?
- At least six years ago.
- 7 Q. All right. Putting aside that instance, 8 can you recall any other circumstances where you 9
- testified as a percipient witness?
- 10 A. No.
- 11 Q. And have you ever been a party to a 12 litigation?
- 13 A. Yes.
- Q. Let's put aside for the moment litigations. 14 15 arising out of KLA-Tencor's option practices. Other 16 than litigation arising out of that subject matter, 17
 - have you been a party to a litigation?
 - A. No.
- 19 Q. Did you review documents in preparation 20 for your deposition today?
- 21 A. No.
- 22 Q. Have you had an opportunity to speak with 23 your counsel?
- 24 A. Yes.
- 25
 - Q. And would you identify is that Mr. Belnick

- 2 Q. If you needed to remember the date, how would you track down that date?
- A. How would !? I would probably go back to 5 some old email.
- Q. What is your email address? 6
 - A. Stu, S-t-u, .nichols@gmail.com.
- 8 Q. I believe you said you met with the SEC 9 one time; is that correct?
- 10 A. Correct.
- 11 Q. And who do you recall was present at that 12 meeting? 13
 - A. Let's see, my counsel, Mark Belnick.
- There was at least one representative of the Office 14
- of the U.S. Attorney; his name was I believe Michael 15
- 16 Wong. There were two representatives of the FBI
- 17 whose names I don't recall. And there was at least
- 18 one representative of the SEC, and her name is
- 19 Elena Ro. 20
 - Q. And that's Miss Ro who is in attendance today?
- 22 A. That's correct.
- 23 Q. Do you know who called for that meeting?
- 24 A. No. I don't.
- 25 Q. When you attended that meeting, were you

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questioned with respect to KLA's option practices?

A. Yes.

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- Q. Were you questioned concerning communications that you had while you were general counsel at KLA-Tencor?
- A. Yes.
- O. Were you general counsel at KLA-Tencor? 7
- 8 A. I believe at that point I was no longer, 9 though I don't have the date fixed in my head.
 - Q. What was the approximate time period that you were general counsel at KLA-Tencor?
- A. My start date was I believe October 25th of 1999, and my resignation date was October 16th 14 of 2006.
 - Q. I believe you stated that you made statements during the meeting concerning your communications with -- well, let me ask you.

You were asked at the meeting about communications that you had as general counsel with KLA-Tencor with personnel at KLA-Tencor; is that correct?

- 22 A. That's correct.
- 23 Q. And you were also asked questions with 24 respect to communications that you had as general counsel of KLA-Tencor with KLA-Tencor's outside

Shall we have that understanding?

- A. Yup.
- 3 Q. You may have been asked questions about 4 your communications with board members; is that 5 correct?
- ń A. I may have, yes, 7
 - Q. While you answered questions, did you make a record of your interview?
- 10 Q. And did you observe anyone else in the 11 room making a record of your interview?
 - A. The other attorneys who were observing the deposition may well have taken notes. I don't have a specific memory about whether they did or didn't.
- Q. While you were questioned about your 15 16 communications with KLA personnel, did you assert 17 the attorney-client privilege on behalf of the 18 company in response to those questions or did your 19 attorney assert them on your behalf?

20 MR. BELNICK: Maybe I can help with this. 21 Before Mr. Nichola answered any questions I obtained 22 a representation from Mr. Wong and I believe SEC 23 counsel that KLA was cooperating with their

24 inquiries. This was prior, as you know, to this 25 lawsuit. And that Mr. Nichols was therefore free to

Page 23

1 counsel; is that correct?

- A. Yes, that's correct.
- Q. Can you recall any other general categories of communications that you were questioned about by either the SEC or the representatives of the U.S. Attorneys Office?
- A. I'm not sure what you mean by "general categories of communication." Can you be more specific?
- Q. Yes. I think we identified communications that you had with KLA personnel. We also identified communications that you had with outside counsel for KLA. Were you questioned about any other categories of communications, such as communications with persons outside of KLA who were not outside counsel and who were not KLA personnel?
- A. So I guess it depends. I may have been asked about communications with KLA's board 18 members. And I don't know whether when you use the phrase "KLA personnel" you're including board members.
- 22 Q. Thank you for that clarification. For 23 purposes of my questions I will include KLA's board of directors or former members of the board in the category of "KLA personnel,"

Page 25 answer questions that otherwise would be privileged.

I left the room and I called KLA's then general counsel, Mr. Gross I believe his name was. and either he or someone from his office confirmed to me over the telephone that the government's representation to me was accurate and that with respect to the Justice Department and the SEC. Mr. Nichols was free to answer any inquiry even though it might otherwise be considered subject to the attorney-client privilege or work product immunity. And on that basis, thereafter I made no objections on privilege grounds.

MS. WEISS: And so your understanding as a result of your conversation with Mr. Gross was that you were not obliged or even requested to assert the attorney-client privilege in response to questions about Mr. Nichols' communications with KLA personnel; is that correct?

MR. BELNICK: That's correct. Not only that I was not obliged to and that I should not.

MS. WEISS: And the same question with 21 22 respect to the work product doctrine, that you were not either requested or required to assert that 23 24 privilege, and that indeed you were being requested 25

by the company to respond -- to have Mr. Nichols

Page 26 1 respond to the questions of both the SEC and the 1 2 U.S. Attorneys Office; is that correct? 2 3 MR. BELNICK: Essentially, yes. 3 4 BY MS. WEISS: 4 5 Q. Mr. Nichols, are you aware of any 5 6 confidentiality agreements between KLA-Tencor 6 7 and the U.S. Attorneys Office? 7 8 A. No. 8 9 Q. Are you aware of any confidentiality 9 10 agreements between KLA-Tencor and the Securities 10 11 and Exchange Commission? 11 12 A, No. 12 13 Q. Was anyone else present other than the 13 14 people that you identified that you can think of? 14 15 A. No. 15 Q. Were you there pursuant to subpoena or 16 16 17 voluntarily? 17 18 A. I believe I was there voluntarily. 18 19 Q. During the time that you answered 19 20 questions posed to you, were you shown documents? 20 21 A. Yes. 21 22 Q. Were any of the documents - did any of 22 23 the documents reflect what you would have believed 23 were attorney-client privileged communications 24 between yourself and other people? 25 Page 27 1 A. Yes. 1 2

Page 28 knowledge? A. Not that I know of. O. Following that interview, were you contacted by any representatives of the SEC to give any follow-up statements, either through a meeting or in writing or by telephone? A. Was I personally contacted? Q. Were you contacted either directly or through your counsel. A. Yeah. I believe that my counsel was contacted. Q. Did you turn over additional statements following that interview which you understood would be turned over to the government? A. When you say "turn over," what do you mean? Q. Did you write anything down that you understood would be turned over to the government? A. Did I personally write anything down? Q. Yes. Or participate in a writing that was turned over to the government. A. Well, a written submission was made after

Q. Generally what other categories of documents were you shown at that meeting?

A. Meaning documents that would not be privileged, that I did not think were subject to the privilege?

Q. Or not subject to the attorney-client privilege. In other words, research, PowerPoint, memoranda, anything like that.

A. I don't remember any PowerPoints. I don't know what you mean by "research." But I don't --11 12 if you mean legal research, or for that matter technical research, I don't remember anything along those lines. I do remember SEC filings. And there may have been, for instance, email that was not -that I would not have deemed to be subject to the privilege that I talked about. Q. How long did the interview last?

19 A. I believe we started at 9:00 or 10:00 and 20 we concluded at 4:00 or 4:30, something like that.

21 Maybe it was 5:00. I don't remember exactly.

22 Q. I take it that the interview was not

23 transcribed?

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24 A. Correct. 25

Q. And it was not recorded, to your

MS. WEISS: You did not make a Wells 2 submission?

Q. Okay. This is a Wells submission?

MR. BELNICK: Let me answer it was not.

the interview on my behalf.

MR. BELNICK: Correct. It was a submission made by counsel; mainly me and my co-counsel, Akin Gump. And it was confidential and subject to FOIA, and still is as far as I'm concerned. And we made the appropriate requests at the time for FOIA treatment and confidentiality, and those are still in effect, those requests.

MS. WEISS: Was the submission that was made made solely to the SEC?

MR. BELNICK: Yes.

BY MS. WEISS:

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Q. Mr. Nichols, do you know if a submission was made to the U.S. Attorneys Office?

A. I'm not aware of any submission made to the U.S. Attorneys Office.

MR, BELNICK: The answer is no.

BY MS. WEISS:

20 Q. Other than the submission that your 21 counsel identified, did you make any other 22 submissions to either the SEC or the U.S. Attorneys 23 Office?

24 A. No, not that I'm aware of.

25 Q. Were you contacted for any follow-up Page 29

8 (Pages 26 to 29)

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questioning up until today by either of those agencies?

A. No.

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- Q. Since -- do you recall generally press about potential option dates being retrospectively selected in about May of 2006? Do you recall generally that time period? Wall Street Journal articles or other articles?
 - A. Yes.
- 10 Q. Since that time period, Mr. Nichols, have 11 you had any communications with the press?
- 12 A. Regarding stock option matters?
- Q. Yes. 13
- 14 A. No.
- 15 Q. Communications involving yourself appeared 16 in the press before the complaint was filed against my client, Mr. Schroeder, which was filed in July of 2007. Do you know who gave those communications to 19 the press?
- 20 A. You'll have to be clearer on what 21 communications you're talking about. I'm not sure what you're referring to. 22
- Q. Do you recall any reading any press 23 24 about KLA-Tencor and your communications with Mr. Schroeder that were discussed in the press?

the "Special Committee" in my questioning.

2 I understand that you met with the Special 3

Committee after May of 2006; is that correct? MR. BELNICK: Could you clarify if you 4 5

mean the board members on the committee itself or 6 their counsel?

BY MS. WEISS:

Q. I was going to ask you about the attendees, but --

MR. BELNICK: I think it will be faster if you divide it.

MS. WEISS: All right.

MR. HEMANN: Shirli, I think this is 14 probably a good time for me to interject that as a general matter, we have advised Mr. Nichols through

16 his attorney that KLA-Tencor, which would include any committees or members of the board of 17

director - the directors of KLA-Tencor or their 18 19 counsel, do not waive any privilege that might be

20 applicable, including the attorney-client or the

21 attorney work product privilege.

22 And we have requested Mr. Nichols through 23 his counsel, Mr. Belnick, that he adhere to his 24 cthical statutory and fiduciary duties, such as they

are, and take all necessary steps to protect both

Page 31

- A. There were a number of different articles, different press items; so, yeah, I remember a number of different things in the press.
- Q. Do you know of anyone who delivered or gave information about your communications with Mr. Schroeder to any member of the press or media? A. No.
- Q. Do you have any facts on which you can base a suspicion that any particular person gave copies of your communications to the press that involved your communications with Mr. Schroeder?

12 MR. BELNICK: Just for the record, I 13 object to him being asked for suspicions. 14

But you may answer.

THE WITNESS: No.

MR. FICKES: I also object the question calls for speculation.

18 BY MS. WEISS:

- 19 Q. Sir, you were aware that the board of directors of KLA-Tencor at some point after May 1st, 2006, formed what they called the Special Committee of the board to investigate KLA-Tencor's option 23 practices?
- 24 A. Yes, I'm aware of that.
 - Q. All right. So I'll refer to that maybe as

the attorney-client privilege and the attorney work product privilege doctrine as he answers questions today.

And I don't know where exactly this particular set of questions is going, but I wanted to make it clear that the company has made that request. To the extent that a question that you ask would reveal in Mr. Nichols' answer privileged information; privileged under either the work product doctrine, the attorney-client privilege, we've asked Mr. Nichols to decline to answer the question.

And Mr. Belnick will make an observation if he feels that Mr. Nichols' answer will reveal such information, and on that basis of Mr. Beinick's observation, we would ask Mr. Nichols not to answer the question.

18 MS. WEISS: All right. As I understand 19 your comments, Mr. Hemann, on behalf of KLA-Tencor 20 you would instruct Mr. Nichols not to respond to questions concerning the content of communications 22 between Mr. Nichols and KLA-Tencor's Special 23 Committee --

24 MR. HEMANN: Correct.

25 MS. WEISS: -- including the members of

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the Special Committee or the counsel acting for 2 their members; is that correct? 3

MR. HEMANN: That's correct.

MS. WEISS: Is that the same instruction that you would make with respect to all of KLA-Tencor's current and former personnel?

MR. HEMANN: Yes,

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MS. WEISS: Would that also be true with respect to the assertion of the work product doctrine with respect to all current and former inside attorneys of KLA-Tencor?

MR. HEMANN: Yes.

MS. WEISS: That is to say that to the extent that they met with the Special Committee. you would instruct them not to respond to my questions --

MR. HEMANN: Oh, I'm sorry. I'm sorry. I thought you were talking about Mr. Nichols' communications with attorneys for KLA-Tencor.

I would instruct Mr. Nichols not to -- I would advise Mr. Nichols that the company is taking the position that his communications with attorneys for KLA-Tencor, whether inside attorneys or outside attorneys, are protected by some combination of the attorney-client privilege and the attorney work

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MR. HEMANN: Yes.

2 MS. WEISS: And would it be your 3 instruction to each of KLA-Tencor's current and 4 former in-house counsel that they are not to respond 5. to questions that I pose to them as witnesses

regarding their communications with the Special 6 7 Committee or its counsel on the basis of the work 8 product doctrine?

MR. HEMANN: I think my comments and 9 10 positions today are directed solely to Mr. Nichols, I'd be happy to talk to you after the deposition 11 12 about other potential witnesses.

MS. WEISS: Well, Counsel, we'd like to make a clear record today of KLA's intentions with respect to instructions to witnesses so that we don't have to take more witness' depositions before we approach the court with these issues.

So these issues have been vetted over many weeks now. Are you not prepared to tell me what the company's position is with respect to other attorneys that I call as witnesses as far as the assertion of the attorney-client privilege and the work product doctrine is concerned?

MR. HEMANN: I'm prepared to meet and confer with you about other witnesses outside

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product doctrine.

MS. WEISS: Okay. Right now I'm just on the Special Committee.

THE VIDEOGRAPHER: I'm sorry. Is your BlackBerry on?

MR. HEMANN: Yes. I can turn it off.

THE VIDEOGRAPHER: Somebody is starting to interfere with the audio.

MS. WEISS: You may actually have to put it remotely. I've had trouble with Blackberrys that are even off.

THE VIDEOGRAPHER: Thank you.

MS. WEISS: Okay. Mr. Hemann, what I'd like to do is, first of all, segregate the Special Committee. And I think you were clear about your instruction with respect to the attorney-client privilege.

18 I'm moving now to the work product 19 protection. As to Mr. Nichols' communications with 20 the Special Committee or the Special Committee's 21 counsel, is it your instruction to him not to

respond to questions on the grounds that asks for 22 23 his communications to those personnel; the Special

Committee or their counsel, on the grounds of the

25 work product doctrine? Page 37

the context of Mr. Nichols' deposition. MS. WEISS: Mr. Nichols --

MR. BELNICK: Can I just make a brief statement?

MS. WEISS: Please.

MR. BELNICK: Just to make clear, as I indicated both to you and Mr. Hemann and our communication before deposition when Mr. Hemann gave the instructions he described, Mr. Nichols, as a

10 lawyer, former general counsel for KLA, obviously has fiduciary ethical and legal obligations and so 11

12 he has no choice. 13.

And I'm neither criticizing or applauding. but he obviously has no choice but to follow the instructions of KLA and its counsel, and therefore he will follow the instruction that Mr. Hemann just put on the record.

And if all or part -- or the substantial part of an answer would involve privileged or work product, I have no choice but to say "privilege": meaning he can't answer it. Not because he doesn't want to answer or I don't want him to answer, but because he has no choice as a lawyer other than to follow his former clients' request and direction.

MS. WEISS: I understand, Mr. Belnick.

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And to the extent that I continue to ask questions that call for communications which you deem privileged, my purpose is going to be to elicit your objection and make a record from which a court can infer your intentions specifically and generally. And Mr. Hemann's intentions.

So that will be my purpose in pursuing lines of questioning as to which you've already made your position.

MR. BELNICK: Lunderstand. And just two quick points on that so we can get back to the record. First, just so it's clear, when you say "your"; meaning looking at me, they're not my objections. They're KLA's objections and we are adhering to them.

Second, I would hope, but it's entirely 17 up to you, that given the statement Mr. Hemann has made, it's fairly clear that there's not going to be 18 very much that Mr. Nichols can answer so I would request that you -- we try to limit the record building for the sake of saving everyone's time. But I'm certainly not going to stop you or try to stop you.

24 MS. WEISS: Okay. Thank you, sir.

25 BY MS, WEISS:

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2 BY MS. WEISS:

- Q. Mr. Nichols, if you met on more than three occasions, do you think you would remember that?
 - A. Yes.
- Q. Did you make calendar entries as to when 6 7 you met with the Special Committee?
 - A. I may have.
- Q. Did you meet with the SEC before or after ٥ 10 you met with the Special Committee? And if it was 11 in between, you can tell me that, too.
 - A. I really don't remember the timing.
- 13 Q. Okay. The memoranda turned over to us 14 with respect to July 28th. 2006, states that the 15 people who were in attendance at your interview 16 were the following: Richard Mannaro, Jack Dicanio, 17 Elizabeth Harlan, all from the Skadden Arps Law
- 18 Firm; Steven Daughters from LECG, which I understand
- 19 was their forensic consultant; Mr. Belnick by 20 telephone; yourself,

21 Do you recall anyone else being present at 22 that interview?

23 A. I have a memory that there was a second 24 representative of LECG. Other than that - and 1

25 wouldn't have been able to come up with a name of

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1 Q. Mr. Nichols, the notes, the final memoranda that the Special Committee counsel 2 3 prepared of your interviews with the Special 4 Committee, were turned over, as I understand 5 it, to Mr. Schroeder by the SEC in compliance with 6 Rule 26 in this litigation. 7

I am going to read to you the dates of the interviews that I have and ask you whether or not you generally recall that those were the dates that you met with the committee. So the dates that I have are July 28th, 2006; August 4th, 2006; and September 18th, 2006.

Is that generally your recollection as to when you met with the Special Committee?

A. That sounds generally right,

MR. BELNICK: On all three of those occasions?

Because I think the witness' recollection was -- and I think he was correct -- that he met only once with them.

THE WITNESS: No. no.

22 MR. BELNICK: I'm misunderstanding then. 23

THE WITNESS: She's referring to the

24 Special Committee, not to the SEC. 25

MR. BELNICK: Oh, I apologize. I

Mr. Daughters, but I just remember that there were 1

2 two -- I thought I remember there being two LECG 3 people there.

- Q. All right. Other than that person, do you recall anyone else being in attendance at that meeting?
 - A. No.

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- Q. Who, as you understood it at that time, were the members of the Special Committee itself?
- 10 A. The members of the Special Committee 11 itself were Ray Bingham and -- I'm blanking on his 12 name. 13
 - Q. Steven Kaufman?
- 14 A. Thank you. Steven Kaufman.
- Q. Did you meet with either Mr. Bingham or 15 16 Mr. Kaufman, or both, at any time in connection
- 17 with KLA-Tencor's investigation of its stock option
- 18 practices?
 - A. Yes.
- 20 Q. How many times did you meet with
- 21 Mr. Bingham?
- 22 A. You're referring now to in-person meetings 23 as opposed to telephone meetings?
- 24 Q. Let's start with the in-person meetings.
- 25 A. I recall only one in-person meeting with

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Ray Bingham in connection with his responsibilities relative to the Special Committee. 2

Q. And at the time that you met with Mr. Bingham, was he questioning you with respect to your past communications at KLA-Tencor?

A. No. Q. Was it a meeting in connection with his responsibilities as a member of the Special Committee?

A. Yes.

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11 O. Was there a second meeting with Mr. Bingham? 12

13 A. Not that I recall.

> Q. Was there any time that Mr. Bingham participated personally in an interview of you with respect to the investigation?

A. No.

Q. Okay. Moving to Mr. Kaufman. How many 18 19 times did you meet with him either in person or by telephone? 20

21 A. I don't believe I ever met with him in 22 person in connection with his responsibilities on 23 the Special Committee. 24

Q. Okay. Or by telephone?

A. I remember at least one meeting that he --

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1 MR. BELNICK: It is my instruction to 2 the witness -- just so it's clear, Shirli, I'm not 3 trying to mince words -- is he needs to follow KLA's direction. And the direction, as I understand it 4 and as you understand it, is that KLA has directed 6 him not to answer questions that we believe would 7 implicate attorney-client privilege or work product, 8 and we're following that direction.

MS. WEISS: Okay. And just so that 10 we don't have to keep repeating that every time, let's have an agreement that when I say, "Are you instructing him not to answer" and you say "Yes," 12 that will mean that you are instructing him not to 14 answer based on the instruction of KI.A which in turn 15 is based on the attorney-client privilege and the 16 work product doctrine.

MR. BELNICK: Correct. Just so long as it's clear that it's not Mr. Nichols or his counsel who made decisions on whether the privilege exists or doesn't exist. We have no position on that.

21 MS. WEISS: Very good.

MR. BELNICK: I mean, the privilege exists and we don't take any position. I understand

24. there's a waiver issue pending. We're not taking

25 any positions on whether anything has been waived

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in which he participated by phone. 2

Q. Was the purpose of that meeting, as you understood it, to provide your advice to him as to his responsibilities as a member of that committee?

A. No.

Q. What was the purpose of the meeting with 6 7 Mr. Kaufman?

A. Well, it was a phone meeting that he participated in by phone that included a number of other people, including Ray Bingham in person.

Q. And what was the purpose of that meeting, as you understood it?

13 MR. BELNICK: One second, please. I'm 14 trying to ascertain if we have a privilege issue 15 here.

MS. WEISS: Sure.

(Discussion off the record between

Deponent and Counsel.)

19 MR. BELNICK: I believe that the answer will implicate the privilege, at least work product

and perhaps attorney-client as well, so we'll have

22 to follow KLA's instruction and respectfully

23 decline.

24 MS. WEISS: Okay. And your instruction is 25 to the witness not to answer the question; correct?

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2 MS. WEISS: I understand.

MR. BELNICK: We're following KLA's direction.

MS. WEISS: Lunderstand.

THE WITNESS: And just to be clear, if you instruct me not to answer relative to a privilege issue that exists within -- between you and me, you need to make that clear; right?

MR. BELNICK: Thanks.

11 THE WITNESS: I mean, I don't want every 12 instruction to be construed as an instruction based ---

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MR, BELNICK: I know, Don't worry, If Shirli goes after our top secret confidential

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discussions. I'll make it clear.

17 BY MS. WEISS:

18 Q. Okay. So I think we were questioning you 19 about Mr. Kaufman and I think you declined to answer 20 a question.

21 A. Well, your question was what was the

22 purpose of this meeting.

23 Q. And you're instructed not to answer --

24 A. Correct.

25 Q. - based on the attorney-client privilege

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and the work product doctrine.

All right. So I have notes from an interview of you that occurred August 4th, 2006. The notes record that Mr. Marmaro, Mr. Dicanio,

Miss Harlan, Mr. Daughters, and Mr. Belnick were at 5 that interview, as well as yourself. Mr. Belnick I 6 7 don't think made it clear whether he was there by

8 phone or in person. 9

MR. BELNICK: I was in person...

10 BY MS. WEISS:

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Q. In person.

And in addition, on August 4th a gentleman named Joe Anastosi also joined.

- A. Okay. So it may have been in the second 14 meeting that there were two LECG people present. 15 16 Because Mr. Anastosi is LECG?
- 17 Q. Yes.
 - A. Yeah.
- 19 Q. And does that comport with your 20 recollection?
- 21 A. Yes.
- 22 Q. All right. And then there was a third 23 interview that occurred on September 18th, 2006, and
- at that interview only Mr. Dicanio and Miss Harlan 24
- attended as well as your counsel and yourself and no

MR. BELNICK: I'm sorry.

2 THE WITNESS: I do generally recall the

3 instruction.

BY MS. WEISS:

- 5 Q. All right. Now, in addition to the 6 Special Committee, were you also interviewed in connection with your service as general counsel at KLA by something called the Special Litigation
- Committee of KLA-Tencor at any time? 10
 - A. Yes:

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- Q. And can you identify approximately when that interview occurred.
- A. Well, it would have been after the third 13 14 of the Special Litigation Committee meetings which 15 you have --
- 16 MR. BELNICK: The third of the Special 17 Committee?
- 18 THE WITNESS: Yeah, I'm sorry. The third 19 of the Special Committee meetings which you have reminded me occurred in September of '06.
- 21 BY MS. WEISS:
- 22 Q. How many meetings did you attend with the 23 Special Litigation Committee?
- 24 I believe there were two.
 - Q. And whom did you understand the Special

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one else.

Does that comport with your recollection?

- A. Correct. Although I believe Mr. Belnick participated by phone.
- Q. All right. Now, of those meetings, is there any person that you have a recollection that attended that I didn't mention?
- Q. And at those meetings would it be correct to say that the attorney who questioned you said that KLA was the holder of the attorney-client privilege and the work product privilege with respect to that - the Special Committee's interview of you and could turn the results of that interview as they chose over to third parties?

Do you recall that instruction?

MR. BELNICK: I'll object to the extent that it calls for him to make legal conclusions -oh, was it an instruction?

- BY MS. WEISS: 20
- 21 Q. Do you recall that instruction?
- 22 MR. BELNICK: I strike the objection.
- 23 BY MS. WEISS:
- 24 Q. Do you have in mind the question?
- 25 A. I have in mind the question.

Litigation Committee to be comprised of? 1

- 2 A. Do you mean in terms of the board 3 committee itself who was on that committee?
 - Q. Yes.
- 5 A. I have a memory that it was Mr. Kaufman and Mr. Wong, but I'm not certain about that.
- 7 Q. This would be a different Mr. Wong than 8 the Mr. Wong that you identified earlier? 9
 - A. Correct.
- 10 Q. And you said you believed that there were two meetings. Can you tell me who attended those 11 meetings to the best of your recollection. 12
- 13 A. I believe that Tim Miller from the Skadden firm attended both of them and Jim Lyons attended 14 15 the first one, and perhaps both.
 - Q. Anyone else?
 - A. I don't believe so.
 - Q. Who took notes?
- 19 A. Oh, and Mr. Belnick. Pardon me.
- 20 Mr. Miller and Mr. Lyons may have taken
- 21 notes. 22

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- O. You did not?
- 23 A. I did not.
- 24 Q. Backing up to the Special Committee
- interviews. Would it be correct to say that one of

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the attorneys took notes during that interview?

A. Yes.

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- O. And was that a Skadden attorney that took 4 notes?
 - A. I don't have a specific memory. I have a general memory that Miss Harlan was taking notes, Mr. Dicanio may have taken notes. I don't remember one way or another.
 - Q. Those notes were not submitted to you at any time --
 - A. No.
- 12 O. -- would that be correct?
 - Would it be correct that they were not submitted?
 - A. That would be correct.
- 16 Q. Okay. All right. Following your meeting with the Special Committee and the Special 17 18 Litigation Committee, have you entered into any
- 19 agreements with the company? 20
 - A. Yes.
- Q. Could you tell me the first agreement 21
- 22 that comes to mind that you've entered into with
- 23 the company.
- 24 A. The first agreement that comes to mind had to do with my laptop computer that I used while I

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- entered into with the company?
- A. Those are the only two that I recall.
- 3 Q. Okay. Have you entered into a settlement agreement with the company with respect to the pending shareholder derivative litigation?
 - A. No.
 - Q. Do you have a draft of any such agreement?
- 8 A. No.
- 9 Q. Do you have an understanding with the 10 company as to what would happen to you in that
- 11 litigation? 12
 - A. No.
- Q. Will you please summarize your educational 13 14 background, sir.
 - A. Starting with where?
 - Q. Graduation from high school.
- 17 A. I graduated from high school from
- 18 San Carlos High School in California. I went to
- 19 receive my undergraduate degree at the University
- 20 of California Berkeley. And I received my law 21 degree from the University of San Francisco.
 - Q. What year did you graduate from Berkeley?
 - A. 1983.
- 24 Q. And what year did you graduate from law 25
 - school?

Page 51

1 was at KLA.

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- Q. And what was that agreement generally?
- A. In general my concern about my laptop was that I had confidential information on there relative to other clients with whom I was consulting. KLA wanted to preserve the laptop and the hard drive.
- And so in general the agreement provided that Skadden would be the custodian of the laptop and that if it were ever subpoenaed or requested, that I would be given notice of that and be given the opportunity to take steps to preserve the confidentiality of any of the information on there that does not relate to KLA.
 - Q. Okay. And that's an agreement in writing?
- 16 A. Correct.
- 17 Q. Okay. What's the next agreement that you 18 entered into with the company, if any?
- 19 A. The next agreement that I entered 20 into with the company was in connection with my 21 resignation from the company.
 - Q. Okay. And that was also a written agreement?
- 24 A. Correct. 25
 - Q. Okay. What's the next agreement that you

- 1 A. 1987.
 - 2 Q. Do you have any formal training in 3 accounting, sir?
 - 4 A. No.
 - 5 Q. Do you have any informal training in 6 accounting?
 - A. It depends on how you define "informal."
 - Q. Did you receive some on-the-job knowledge about accounting in relation to options while you were at KLA?
 - A. I had exposure to issues relating to option - accounting for options, yes.
 - 13 Q. Do you hold any other degrees other than 14 those that you've mentioned?
 - A. No.
 - 16 Q. Do you hold any licenses other than a 17 driver's license and your California Bar license? 18
 - A. Well, I'm certified to scuba dive.
 - [9 O. That counts. Anything else?
 - 20 A. That's all that comes to mind.
 - 21 Q. No real estate or resale licenses or 22
 - anything like that?
 - 23 A. No.
 - 24 Q. Okay. Following your graduation from law
 - school, could you please take me through the steps

Page 56

Page 57

Page 54

of your employment, your professional employment.

- 2 A. My first job after law school was with 3 a small law firm in San Francisco that was at the time - well, it's currently named Goodin, 4
- MacBride, Squeiri, S-q-u-e-r-i, & Schlotz, I think. 6

I then went in late '89 to Varian Associates, Inc. 7

I left Varian Associates, Inc., in '95 -

- 8 Q. Okay. Let me just interrupt you here for just a moment. The first group, was that a company 9 or a law firm, did you say? 10
 - Law firm.

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- 12 Q. That was a law firm. Okay. And you said 13 you started with them when? 14
 - A. Well. I was a law clerk with them before I graduated law school and then I started as an attorney in 1987 after graduating. Yeah.
 - Q. And you stayed until 1989?
 - A. Yes.
- 19 Q. And your general responsibilities at that 20 time were?
- 21 A. I was a litigation associate. 22
 - Q. Okay. And then in 1989 you went with
- 23 Varian Associates. Was that a law firm or a 24 company?
- 25 A. A company.

- Q. Did you -- generally did you render advice 2 in connection with the company stock option program while you were at Varian?
- 4 A. No.

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- 5 Q. Did you receive options while you were at Varian? б
 - A. Yes.
- 8 Q. Can you generally describe how options were granted when you were at Varian? 9
 - A No.
- O. You had nothing to do with the option 11 12 process?
- 13 A. No knowledge of how options were granted 14 at Varian,
- 15 Q. And you didn't participate in any way,
- 16 shape or form in the process itself?
- 17 A. No.
- 18 Q. Were you in-house general counsel at 19
- Varian?
- 20 A. No.
- 21 Q. What was your title there? 22
 - A. Initially it was Associate Corporate
- 23 Counsel and then shortly thereafter I was promoted
- 24 to Corporate Counsel. 25
 - Q. Who was their outside counsel?

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- Q. A company. Okay. And where were they I 2 based?
- 3 A. Pale Alto, California. 4
 - Q. Okay. What kind of company were they?
- 5 A. A diversified electronics manufacturer. 6
 - Q. Were they private or public?
- 7 A. Public.
- 8 Q. At the time you were with Varian
- 9 Associates, do you recall whether or not you were 10 awarded any option grants?
- 11
 - A. Yes.
- Q. What did your responsibilities entail at 12 13 Varian?
- 14 A. Well, they varied over time.
- 15 Q. Can you give me a general statement of how 16 they changed over time?
- 17 A. Yeah. Initially I was hired to manage
- 18 litigation for the company and as time went on, I
- 19 took on other substantive responsibilities that
- included -- I did some M&A work, I managed the 20
- 21 company's employment law matters, I consulted on
- product safety and liability issues. I was a member
- of two of the company's -- the boards of the two of
- 24 the company's joint venture partnerships and other
- 25 duties as assigned.

- A. Well, it was a large company. We had a
 - lot of outside counsel. Do you mean outside counsel 2
 - 3 for corporate matters? 4 Q. Yes.
 - A. Orrick Herrington.
 - 6 Q. While you were at Varian, what department
 - 7 of the company accounted for stock options, to your 8 knowledge?
 - A. What department?
 - 10 Q. Yes. Was there a department of the
 - 11 company that was responsible for the accounting 12
 - of stock options? 13
 - A. For the accounting of stock options.
 - 14 Well, presumably the accounting function. I don't 15

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- 16 Q. It's not something that you ever had 17 occasion to inquire as to?
- 18 A. No.
- 19 Q. Is that right?
- 20 A. Correct.
- 21 Q. From your perspective, you received stock
- 22 option awards; is that correct?
- 23 A. Yes. You've asked me that three times,
- 24 Yes.
- 25 Q. And did you have occasion to exercise and

| | Nicho | ls, Stua | rt J. Esq. | 1/27/2009 |
|---|--|----------|--|----------------------|
| | Pag | e 58 | | Page 60 |
| l sell the option | ns in Varian? | | l public. | |
| 2 A. Yes, 1 | | | 2 Q. They were public. | |
| | did you leave Varian? | | 3 And what was your title and | function |
| 4 A. 1995. | | | 4 there? | idiiciion |
| 5 Q. Who | did you next join? | 1 | 5 A. I was general counsel there | as well and |
| | ung Semiconductor, Inc. | | my function was, you know, to har | dle whatever level |
| 7 Q. And v | where was the company's office base | | 7 issues arose from the company. | or whatever legal |
| 8 that you joins | :d? | | At that time Phoenix was a li | censor of |
| 9 A. San Jo | ose, California. | | software to the PC industry as well | |
| 10 Q. What | was your title there? | 1 | | tust nearesty |
| 11 A. Gener | al Counsel. | li | l used in the development and design | of semiconductor |
| 12 Q. Was t | hat your first general counsel | 1: | 2 devices. | · or nominothingeror |
| 13 position? | • | i | | ise ontions as |
| 14 A, Yes. | | 1. | | , , |
| 15 Q. Gener | ally what was your - what were your | 1: | | |
| 16 responsibilitie | | l l | | sibilities |
| | fair amount of commercial | 1' | 7 entail counseling with respect to op | tions? |
| 18 transactions; 1 | both on the sales and supply side. | 13 | | |
| 19 I did a fair an | nount of licensing of intellectual | - 19 | Q. Did you personally receive | options |
| 20 property, hand | dled employment law issues. We had | 20 | | • |
| 21 some strategic | partnership deals that I was involved | 2 | • | |
| 22 in and we did | some acquisitions that I was involved | 22 | | a regular |
| 23 in.24 O. Did vo | and the first of the second | 2: | | lar" being, you |
| * | our job functions at all entail th respect to the company's stock | 24 | | |
| | | | | |
| | Page | 59 | | Page 61 |
| I options? | | 1 | | ertain of that. |
| 2 A. Well, t | hat assumes that the company had | 2 | | |
| 3 stock options. | Soften de la companya della companya della companya de la companya de la companya della companya | 3 | | to generally |
| 4 Q. It does 5 Did San | indeed. Let me back up. | 4 | | t Phoenix |
| 6 compensation | nsung use stock options as for its employees? | 5 | - | |
| 7 A. No. | for its employees? | 6 | · | _ 1 |
| | ceived no stock options when you | 7 | * · · · · · · · · · · · · · · · | se any sort of |
| • | ing; is that right? | 8 9 | | • |
| 10 A. That's | | I'G | | enve what |
| | did you leave Samsung? | 11 | The state of the s | or se what |
| | e're up to I think it was early | 12 | accounting for option grants at Phoe | พาสเอา <u>คากา</u> |
| 13 to mid '98. No | o. no, no. I'm sorry. '97. | 13 | | |
| 14 Q. Okay. | Sometime in 1997? | 14 | • | don't know |
| 15 A. Yes. | | 15 | | |
| | hy did you leave Samsung? | 1.6 | | h |
| 17 A. I'm sor | ry. Why? | 17 | Q. Okay. What was your next of | employment? |
| 18 Q. Yes. C | | 18 | | . 5 |
| | opportunity. | 19 | | ome aware of the |
| | it. And who did you join? | 20 | KLA-Tencor opportunity? | |
| 21 A. Phoeni | x Technologies Limited. | 21 | A. I was told of the opportunity | by a partner |
| | Where were they based? | 22 | at Wilson Sonsini named Judy O'Bri | en. |
| <u></u> | e, California. | 23 | Q. How did you know Miss O'E | Frien? |
| 24 Q. Were ti | ney public or private? | 24 | A. She was the corporate secret | ary to another |

25 company that I was considering going to so I was

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A. Public. Or I should say: Yes, they were

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Page 62

- interviewing her for one job and she told me about a 2 different job.
- 3. Q. Okay. And did you decide to interview for the KLA-Tencor job? 4
 - A. Yes.

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- 6 Q. By the way, I may refer to KLA-Tencor 7 Corporation as "KLA-Tencor" or simply "KLA" for short. And when I say "KLA," I mean KLA-Tencor Corporation. Can we have that understanding?
- 10 , A. Yes, we can.
 - Q. All right. So who interviewed you at KLA?
- 12 A. Ken Levy, Ken Schroeder, and John Kispert. 13 MR. BELNICK: Shirli, with apologies. May
- 14 we take a break, a personal order break?
- 15 MS. WEISS: Absolutely. And, in fact, 16 please do interrupt me. I have a tendency not to
- remember to take breaks. So by all means. I see it 18 is 10:56. Why don't we take a 10-minute break.
- 19 MR. BELNICK: Thank you.
- 20 THE VIDEOGRAPHER: Off the record. The
- 21 time is 10:55 a.m.
- 22 (Off the record.)
- 23 THE VIDEOGRAPHER: We are back on the
- 24 record. The time is 11:06 a.m.
- BY MS. WEISS:

- Q. Okay. And did the company make you an 2 offer?
 - 3 A. Yes.
 - 4 Q. And who did you negotiate the terms of 5 your employment with?
 - A. Mr. Boehlke.
 - 7 Q. And did the terms of your offer include an 8 award of options?
 - A. Yes.
- 10 Q. And what did you — did you negotiate back and forth with Mr. Boehlke in terms of your 11 12 employment or did you simply take what he offered 13 vou?
- 14 A. I attempted to negotiate but ultimately 15 took what he offered me.
- 16 Q. Okay. And was it Mr. Boehlke who set your 17 salary compensation --
 - A. Yes.
- 19 Q. -- is that your understanding? 20
 - A. Yes.
- 21 Q. All right. And did he also set the number
- 22 of options you would get when you joined the
- 23 company? 24
 - A. So far as I know.
 - Q. And do you recall what the terms were, as

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- Q. Mr. Nichols, I believe I asked you who 2 interviewed you before you were hired by KLA and I 3
- think that you began to tell me. And I wrote down 4 Mr. Schroeder, Mr. Kispert and Mr. Levy. Did I get
- 5 that right?
- 6 A. Yes. And then one other person, Bob 7 Boehlke, B-o-e-h-l-k-e, I believe is how it's 8 spelled.
- 9 Q. Okay. And who did you understand that you 10 would be reporting to if you took the position?
 - A. Mr. Boehlke.
- Q. And who was Mr. Boehlke? 12
- 13 A. He was then the CFO.
- 14 Q. And that's the Chief Financial Officer? 1.5
 - A. That's correct.
- 16 Q. And who was Mr. Kispert at that time?
 - A. Do you mean what was his title?
- 18 O. Yes.

11

- 19 A. Vice President of Finance.
- Q. And Mr. Schroeder, what was his title at 20
- 21 that time?
- 22 A. Chief Executive Officer.
- 23 Q. And Mr. Levy, who was he?
- 24 A. At that time I believe he was the Chairman
- 25 of the Board of Directors.

- you sit there?
 - A. No.
 - MS. WEISS: Could you hear me okay?
 - 4 THE VIDEOGRAPHER: I was hearing you well 5
 - enough.
 - 6 MS. WEISS: What number are we up to now?
 - 7 **DEPOSITION REPORTER: 50.**
 - 8 MS, WEISS: 50, 5-0?
 - 9 DEPOSITION REPORTER: Correct.
 - 10 MS. WEISS: We will have marked next in 11
 - order Exhibit 50. 12
 - (Whereupon, Exhibit 50 was marked
 - for identification.)
 - 14 MS. WEISS: This will be 51 (indicating).
 - (Whereupon, Exhibit 51 was marked
 - 16 for identification.)
 - MS. WEISS: This will be 52 (indicating).
 - 18 (Whereupon, Exhibit 52 was marked
 - 19 for identification.)
 - 20 MS. WEISS: This will be 53 (indicating).
 - 21 (Whereupon, Exhibit 53 was marked
 - 22 for identification.)
 - 23 BY MS. WEISS:
 - 24 Q. All right. Mr. Nichols, turning your
 - 25 attention to Exhibit 52. Exhibit 52 appears to the

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a redlined draft dated October 7, 1999, addressed to yourself, Stuart J. Nichols, and it is unsigned. It has the typewritten signature of Robert J. Boehlke, Executive Vice President, Chief Financial Officer. It's not on company stationery.

Can you identify Exhibit 52, sir?

- A. How would you like me to identify it?
- Q. Can you tell me what it is?
- A. It appears to be a markup of an offer letter to me from the company containing the proposed terms of my employment.
- Q. Okay. And so did you receive an unsigned offer letter and were invited to mark it up for Mr. Boehlke and send it back? Do you recall?
- 15 A. I don't recall. I strongly suspect that I was not invited to mark it up but just did so 16 17 anyway.
 - Q. All right. And the black lining and the deletions on Exhibit 52, are those your negotiations or proposed markups of the contract?
- A. Yes, they appear to be. 21
- 22 Q. Did anybody else mark this document up?
- 23 A. No.

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- 24 Q. Were you advised by counsel, by the way,
- when you joined the company?

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Page 69

- 1 Q. Paragraph 3 states, "Hiring bonus. We 2 had talked about the losses I will incur by not completing the offer period for Phoenix ESPP 3 4 (conservatively, \$2,000.)"
 - Do you see that?
 - A. Yeah.
- 7 Q. Does "Phoenix ESPP" stand for Employee 8 Stock Purchase Plan?
 - A. Yes.
- 10 Q. And were you communicating to Mr. Boehlke 11 that by taking employment at KLA, you would be 12 incurring a loss by not receiving a benefit from 13 the Employee Stock Purchase Plan at Phoenix, your current employment? Is that what you were 14 15 communicating?
- 16 A. Well, I wouldn't put it exactly that way. 17 I would not have received the benefit, that's 18 correct.
- 19 Q. Okay. And you go on to state, "In 20 addition, there are some matching 401(k) dollars 21 (also roughly \$2,000) and the value of unvested 'in 22 the money options." 23

What were you referring to when you were referred to "the value of the unvested 'in the money options in your discussions with

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- Q. And so your effort was to negotiate the terms of your contract in your favor. Was that your effort on Exhibit 52?
 - A. Yes.
- Q. If you take a look at Exhibit 50. Exhibit 50 appears to reflect an email from yourself dated October 12th, 1999, to Bob Boehlke. The subject is "Revised offer letter," and it starts off, "Bob, greetings from Massachusetts. Attached is a marked up version of your offer letter. My changes are noted in revision format. The notable changes are," and then there's a summary of the changes.

So did you send this email to Mr. Boehlke as part of the negotiation of the terms of your employment with KLA?

- 18 A. Presumably, yeah. I don't have a specific memory of writing this, and I haven't -- this is the 19 first time I've seen it since I presumably sent it. But, yeah, that's what it appears to be. 21
- 22 Q. Okay. What did you understand --23 what were you communicating in paragraph 3 to 24 Mr. Boehlke? 25
 - A. What exactly do you mean?

Mr. Boehlke?

2 A. I'm referring to the stock options that I held in Phoenix Technology stock where the exercise 3 4 price was less than the current market price. 5

Q. Okay. And were you asking him to do something with respect to the value of the unvested in the money options as part of your employment?

A. Well, yes. I was asking for a hiring bonus in recognition of what I would be forgiving, foregoing.

- Q. All right. And do you know if you got that, what you were requesting?
- 13 A. Well, you'd have to look at the paper 14 trail here. I truly don't remember. 15
 - Q. Okay. Let's look at Exhibit 51.

That looks to me like it was the final version of your offer, but you tell me. Exhibit 51 is a letter dated October 18th, 1999. It's addressed to yourself. It appears to bear the signature of Mr. Boehlke, and then below that there's the terminology "Acceptance and

- Acknowledgement," and then there's what appears 22 23 to be your signature.
- 24 Would you look at Exhibit 51 and tell me if that's your signature on the second page under

Page 70 Page 72 "Acceptance and Acknowledgement." between Phaenix and KLA such that I would show --2 A. Yes, it is. I went pretty much every day I think to both 2 Q. All right. And so his recommendation --3 3 locations. 4 well, his statement was that you would be receiving 4 Q. Okay. So you continued at Phoenix and you the salary that you requested in your markup; is 5 also started work for KLA. Would that be correct? 6 that correct? A. Yes. 6 7 A. The salary, yes. 7 Q. And you were paid from day 1; is that 8 Q. And in addition, that you would be right? 8. receiving 20,000 shares of - an option to purchase 9 A. Yes, that's my recollection. 20,000 shares of KLA-Tencor stock --10 Q. And where were you "housed," 11 A. That's correct. 11 quote-unquote, in the company? 12 Q. - referenced in that first paragraph 12 A. Do you mean where was my office? 13 under "Salary." 13 Q. Where was your office? I understand it 14 Do you see that? 14 had more than one building. 15 A. Yes. 15 A. At this stage I was lo- -- my office was 16 Q. All right. And I believe you identified located in the building referred to as "Building A." 16 17 your signature on the second page. And then the 17 Q. Okay. 18 date October 25th, 1999. 18 A. At 160 Rio Robles. 19 Is that your handwriting? 19 Q. Okay. All right. Building A. And which 20 A. Yes. 20 floor were you on? 21 Q. And up above where the arbitration clause 21 The 2nd floor. 22 is crossed out and there appears to be initials, are 22 Q. Where was Mr. Boehlke's office in relation 23 those your initials? 23 to your office? 24 A. Yes. 24 A. In that same suite; 50 feet from mine. 25 Q. And you crossed out that arbitration 25 Q. And it was essentially a suite where Page 71 Page 73 clause; is that right? the executives had their offices. Would that be 2 A. Yes. 2 correct? 3 Q. All right. And then below where it says 3 A. Yes. "Start date," it says "TBD." Does that stand for to 4 4 Q. All right. And you had the title of --5 be decided? when you started you had what title? 6 A. Or determined; yeah. A. Vice President, General Counsel. 6 7 Q. To be determined, okay. 7 Q. Were you also a corporate secretary right 8 And then the "(late November)." Do you 8 from the day you started, or do you remember? 9 see that? 9 A. I never was corporate secretary. 10 A. Uh-huh, yes. 10 Q. All right. And then just for purposes 11 Q. All right. And did you write that in? of identification, I have a new hire form that's 11 A. That appears to be my handwriting, yes. 12 12 Exhibit 53. What is a new hire form at the company? 13 Q. Okay. And did you start in approximately 13 What was a new hire form? What was your 14 late November of 1999? 14 understanding of the function of the form? 15 A. No. I started -- immediately upon signing 15 A. It is the form that people complete when 16 16 they commence their employment.

the agreement I started doing tasks for KLA. 17

Q. Okay. When you say "doing tasks," were you still physically located at Phoenix or did you actually move into an office at KLA?

19 20 A. Well, at this point right after I signed 21 the offer letter -- and actually, it may have even

22 been before I signed the offer letter - there were 23 things that I was getting involved in. And I had

24 an arrangement with Bob Boehlke that I would 25 essentially split my time for a period of time

22 Do you see that?

A. Yes.

23 A. Yes.

24 Q. And is that your signature and did you

from the human resources department?

signature and the date 10/25/99.

Q. Okay. And is it a form that you receive

Q. And down below it appears to have your

date it that date?

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Nichols, Stuart J. Esq.

Page 74

A. Yes.

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- Q. And next to that it's human resources. Do you recognize that signature?
 - A. Yes.
 - Q. Whose is that?
- A. It's Aparjo Dehal. I don't know if I'm pronouncing that correctly.
 - Q. Was that a person in human resources?
 - A. Yes.
- 10 Q. And what did you understand -- as you came 11 aboard KLA-Tencor, what did you understand from your discussions with Mr. Boehlke or others what your job responsibilities were going to be? 13 14
 - A. Ultimately responsible for the legal affairs of the company.
 - Q. What does that mean?
- 17 A. That means anything from commercial transactions, employment advice, M&A, management of 19 litigation, some supervision of the incumbent patent 20 lawyer and so forth.
- 21 Q. What was your function with respect to SEC 22 filings? As you walked in the door, what did you 23 think your function was?
- 24 A. To review and, you know, provide input 25 from a legal perspective.

- A. Are you asking me whether at all times 1
- 2 had an assistant or a secretary? 3
 - Q. When you came aboard.
- 4 A. Oh, yeah.
 - Q. Okay. And that person left?
- 6 A. Yes.

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- 7 Q. And do you remember the name of the person 8
 - who followed her in terms of those tasks?
- 9 A. Yeah. So then I had someone who was my 10 assistant for the first half, approximately, of 11 2000.
- 12 Q. What was her name or his name?
- 13 A. Her name was Sylvia Taheri, T-a-h-e-r-i. 14
 - "Sylvia" spelled with a "y." I believe.
- O. And your recollection is she stayed the 15 16 first half of 2000; is that right?
- 17 A. Yes.
- 18 Q. And then did someone follow her?
- 19 A. Yes.
- Q. Who was that person? 20
- 21 A. Her name is Kery Bird, K-e-r-y, B-i-r-d. 22
 - Q. How long did Miss Bird stay as your
- 23 assistant?

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- A. From then until I left the company.
- 25 Q. And were the duties of Miss Bird and

Page 75

- .1 Q. Was part of your function going to be 2 advising the board?
- 3 A. Yes.
- 4 Q. And was part of your function going to be 5 advising the executive officers? 6
 - A. Yes.
- 7 Q. And was part of your function going to 8 be advising nonexecutive officers to the extent you 9 were called upon to do so at KLA?
 - A. Yes.

- 11 Q. Did you have -- as you came in, did you 12 have a staff at all?
- 13. A. I had an administrative assistant and a 14 patent lawyer, and then I had a non -- a person who was not part of the legal department who was also 15 16 reporting to me.
- 17 Q. What was the patent lawyer's name? 18
 - A. Kevin McAndrews.
- 19 Q. And what was your administrative
- 20 assistant's name?
- A. She left shortly after I arrived and I 21 22 don't remember her name.
- 23 Q. Okay, Did someone serve as your secretary or assistant, whatever the terminology was, at KLA
- while you were there?

- Sylvia I don't know how to pronounce her last 2 name - essentially secretarial duties?
 - A. Yes.
- 4 Q. Did you have anyone that seemed to have 5 the duties of a paralegal there at KLA?
- 6 A. Not at that time. Eventually there was a 7 patent paralegal that we hired.
 - Q. What was that person's name?
 - A. Well, there were a couple. The first
- 10 one was named Heidi, H-e-i-d-i, I think, Opstedahl
- (phonetic), I think is her last name, and I can't 1
- 12 even begin to try to spell that. And then she was
- 13 followed by another patent paralegal named Odette, 14 O-d-e-t-t-e, Devera, D-e-v-e-r-a.
- 15
 - Q. Okay. Was there anyone on the corporate side who assisted from a legal standpoint? Any junior attorney or ---
- 18 A. What do you mean when you say "on the 19 corporate side"?
- O. In other words, all the other duties that 20 21 you described; commercial transactions, M&A.
- 22 A. Shortly after I joined the company I hired
- a contract lawyer to handle transactional matters. 23
- 24 Her name was Corinne Tomeo, C-o-r-i-n-n-e, "Tomeo,"
- is spelled T-o-m-i-e-o -- no, T-o-m- -- I don't

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know, T-o-m-e-o.

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- Q. How long did she stay?
- A. A few months is all. Not very long.
- Q. Okay. Anybody else that served more on the transaction or corporate side, not IP?
- A. After Corinne left I hired someone to take over her responsibilities as a payrolled employee.
 - Q. Okay. What was that person's name?
- A. Kim Jackson. Ÿ
- Q. Did Miss Jackson have a law degree? 10
- П A. Yeah. She still does, so far as I know.
- 12 Q. What did Miss Jackson do for you?
- 13 A. General -- really in the beginning it was 14 mostly commercial transactions supporting the sales 15 and procurement organizations. And as time went 16 on, she had increasing responsibility over a broad 17 segment of the issues that we dealt with.
- 18 Q. Did Miss Jackson ever attend Compensation 19 Committee meetings?
- 20 A. No.
- 21 Q. Did Miss Jackson ever attend board
- 22 meetings?
- 23 A. No.
- 24 Q. Did Miss Jackson prepare any of the
- documentation that you interacted with with respect

- A. She was mostly supporting the company's procurement organization but also working on
 - sales-related transactions as well.
 - Q. Okay. Did she ever attend any Compensation Committee meetings?
 - A. No.
 - O. Board meetings?
 - A. No.
 - 9 Q. Did she help you compile documentation for 10
 - either of those two types of meetings?
 - A. No.
 - 12 Q. Okay. Anyone else in the general category 13 that I mentioned?
 - 14 A. If your general category includes 15 transactional work?
 - 16 Q. Yes, transactional work and corporate and 17 M&A.
 - 18 A. There was -- when I joined the company 19 there was a lawyer in the sales organization that
 - was not part of legal and I -- he eventually 21 transferred over into the legal department. His
 - 22 responsibility was to support the sales organization
 - 23 on transactional matters.
 - 24 O. And his name was?
 - A. Alex, A-I-e-x, Yuan, Y-u-a-n.

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- to either the Compensation Committee or the board?
- A. I think that in the latter portion, and by that I mean, you know, the last 12 months or so of my tenure at KLA, she helped me with some matters relating to the Compensation Committee.
 - Q. Is Miss Jackson still employed by KLA?
- 7 A. No.

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- 8 O. Where does she live?
- 9 A. Where does she live? I think in Palo
- 10 Alto, California.
- 11 Q. Do you know if "Jackson" is her married 12 name?
- A. Given that she's not married, I don't 13 14 think it is.
 - Q. I think that means no.
- 16 Okay. Anyone else that you can identify 17 that helped you on the corporate or transaction side? I have Miss Jackson and Corinne Tomeo. 18 Anyone else that filled that role at any time 19
- 20 while you were there?
- 21 A. For the last two years or so of my tenure 22 at KLA there was a transactional attorney that
- worked as a contractor for the company, and her 23
- 24 name is Teri Little, L-i-t-t-l-e, T-e-r-i. 25
 - Q. And she worked as what again, did you say?

Q. Y-u-a-n. Okay.

- 2 Was there any assistant that you had
- during your tenure -- let's put aside Miss Jackson;
- you identified her -- that assisted you in
- connection with anything having to do with
- 6 compensation? 7
 - A. No.
 - Q. When you needed to prepare materials for any Compensation Committee meeting or board meeting.
- 10 who did you look to to assist you? 11
 - A. To the extent that I looked for
- 12 assistance, it would typically have been outside 13 counsel, Bret DiMarco.
- 14
 - Q. Okay. Not Miss Bird or Sylvia?
- 15 A. No. B-r-e-t, D-i-M-a-r-e-o. 16
 - MS. WEISS: Okay. Let's mark Exhibit 54.
- 17 (Whereupon, Exhibit 54 was marked 18
 - for identification.)
- 19 BY MS. WEISS:
- Q. Okay. Exhibit 54 is a document that is 20
- 21 Bates stamped MLB/KLA-SEC 00011067 to 11072. It's
- 22 a document that was received from the SEC in
- 23 production in this litigation. It's entitled
- 24 "Minutes of the Meeting of the Board of Directors
- of KLA-Tencor Corporation," dated November 16th,

Page 85

Page 82

1999.

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Would you make take a moment, sir, and review it.

MR. BELNICK: Shirli, may I remark we do have that document, but it doesn't bear the Bates numbers you have.

MS. WEISS: Well, that's interesting.

MR. FICKES: The copy you gave us has the Bates number of KLS-SEC002735 -

MR. BELNICK: 002735 through 002739, prefaced by the initials KLS-SEC.

MS. WEISS: Okay. And why don't we use the numbers that you just articulated. I must have a different compilation set.

15 BY MS. WEISS:

- Q. Sir, would you take a moment to review Exhibit 54 and tell me when you've done that.
 - A. Okay. I've done that.
 - Q. All right. Can you identify Exhibit 54?
- 20 A. Yeah. These are minutes of a board 21 meeting of KLA-Tencor Corporation for a meeting 22 held November 16 of 1999.
 - Q. All right. Thank you.

And in the second last page of the

25 compilation there appears to be on the minutes a Page 84

Stu Nichols, who was elected Vice president and General Counsel of the Company at the meeting and

Judith M. O'Brien from Wilson Sonsini Goodrich &

Rosati, the Company's outside counsel." And then 4

5 it says,"Mr. Levy acted as Chairman and led the

meeting; Mrs. O'Brien acted as Secretary and kept 6 7 the minutes."

Do you see that, sir?

A. Yes.

8

Ð.

- 10 Q. All right. Does that refresh your memory 11 that Miss O'Brien kept the minutes but then you signed them as present at the meeting and general 12 13 counsel?
- 14 A. No. it doesn't refresh my memory in that 15 regard. I mean, I see what's written here and I don't have any reason to doubt it, but I just don't 16 17 have a memory of that.
- 18 Q. All right. And were minutes generally 19 taken at board of directors meetings that you attended at KLA-Tencor? 20
- 21 A. Yes.

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- 22 Q. And some of those minutes were taken by 23 you as general counsel. Would that be a correct 24 general statement?
 - A. Yes.

Page 83

- signature block for yourself as Vice President, General Counsel. Is that your signature on the
- 3 minutes?
 - A. Yes.
 - Q. Okay. And did you in fact attend the meeting referenced by the document?
 - A. It appears that I did, yes.
 - Q. Do you know if you prepared the notes from which the typewritten minutes were prepared?
 - A. No, I don't recall. I don't know.
 - Q. Okay. Let's go through the minutes,
- Okay. Under "Attendance and Quorum" the paragraph 12
- states, "Present and at the meeting were chairman 13
- 14 Kenneth Levy and Directors James W. Bagley, Leo J.
- Chamberlain, Richard J. Elkus, Dag Tellefsen, Jon D. 15
- Tompkins, Dean O. Morton, Samuel Rubinovitz, Kenneth
- 17 L. Schroeder and Lida Urbanek, constituting a
- 18 quorum. Director Edward W. Barnholt was absent." 19
 - Do you see that?
- 20 A. Yes.
- 21 Q. And do you recall the names of those
- people as people who served as members of the 22
- 23 board of directors of KLA-Tencor at the time?
- 24 A. Yes. 25
 - Q. Then it states, "Also present were

- 1 Q. And when you took the minutes for the 2 company, you did your best to accurately reflect the 3 information that was shown in the minutes; is that 4 correct? 5
 - A. Yes.
- 6 Q. And it's also correct that the minutes are 7 not a transcript of what occurred at the meetings; 8 correct? 9
 - A. Correct.
- 10 Q. And there was general discussion among the participants that might not be reflected in the 11 12 minutes; is that correct?
 - A. That's correct.
 - Q. And as far as you know, what is stated in the minutes, however, are statements of occurrences and statements made that are reflected in the minutes that you took. Would that be correct?
 - A. You lost me on that question. Sorry.
- 19 Q. Okay. To the extent that you took the minutes of a corporation of KLA-Tencor and signed 20 21 the minutes, the statements made in the minutes, to
- the best of your knowledge, would be the reflection 22 23 of what actually occurred or what was said that is
- 24 represented in the minutes as a general rule. Would
- that be correct?

| - 1 | | |
|--|--|---|
| | Page 46 | Page 88 |
| 1 | | Strategic Business Development. |
| 2 | A Jam moniton to acontatoly | 2 Do you see that? |
| 3 | reflect what occurred at the meeting; correct? | 3 A. Yes, |
|] 4 | A. Yes, | 4 Q. Did he serve in any other capacity? |
| 5 | d. and an icomplaint in the 140 Actitibet 10th | 5 A. Yeah. You know, I believe at this time |
| 6 | and the sound in the thirt meeting of | 6 Art Schnitzer was the VP of HR, not the VP of |
| 7 | KLA-Tencor that you attended? | 7 Strategic Business Development. So that appears |
| 8 | | 8 to be an error. |
| 9 | | 9 Q. All right. And then there's Samuel H. |
| 10 | 4 order reportant of Officely | 10 Harrell, Ph.D., Senior Vice President of Strategic |
| 11 | | 11 Business Development; is that correct? |
| 12 | | 12 A. Yes, that's correct. |
| 13 | a take a me along out of the Dould difficultification | 13 Q. All right. Richard P. Wallace was Group |
| 14 | The same and all the same and t | 14 Vice President of Lithography and Films, |
| 15 | and the brook brook to the first (17 | 15 Do you see that? |
| 16 | | 16 A. Yes. |
| 17 | | 17 Q. Is that the same Richard Wallace that's |
| 18 | | 18 president today? |
| 19 20 | - The partie of the total tota | 19 A. John Kispert is president; Rick Wallace is |
| 21 | | 20 the CEO. |
| 22 | | 21 Q. All right. And Rick Wallace, who's the |
| 23 | | 22 current CEO, is the same Richard Wallace that's |
| 24 | THE PERSON OF TH | 23 referred to here? |
| 25 | see here a reference to a VP of HR, but at that time | 24 A. Yes. |
| *** | I believe that our VP of HR was not a corporate | 25. Q. All right. And then your title below that |
| 1 | | |
| 1 | Page 87 officer. So, yeah, so this comparts with my | Page 89 |
| 1 2 | officer. So, yeah, so this comports with my | l is described as Vice President, General Counsel and |
| | officer. So, yeah, so this comports with my Q. All right. And so then briefly Ken Levy | l is described as Vice President, General Counsel and 2 Assistant Secretary. |
| 2 | officer. So, yeah, so this comports with my Q. All right. And so then briefly Ken Levy was the Chairman of the Board at the time and | 1 is described as Vice President, General Counsel and 2 Assistant Secretary. 3 Do you see that? |
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